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Howden (Francis)

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*From the Author*

*D. of Grafton*  
*1795.*

CHURCH AND STATE:

BEING

AN ENQUIRY

INTO THE

ORIGIN NATURE AND EXTENT

OF

ECCLESIASTICAL AND CIVIL AUTHORITY,

WITH REFERENCE TO THE

BRITISH CONSTITUTION.

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BY

FRANCIS PLOWDEN, L.C.D.

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*Incorrupta fides nudaque veritas. Hor.*

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LONDON:

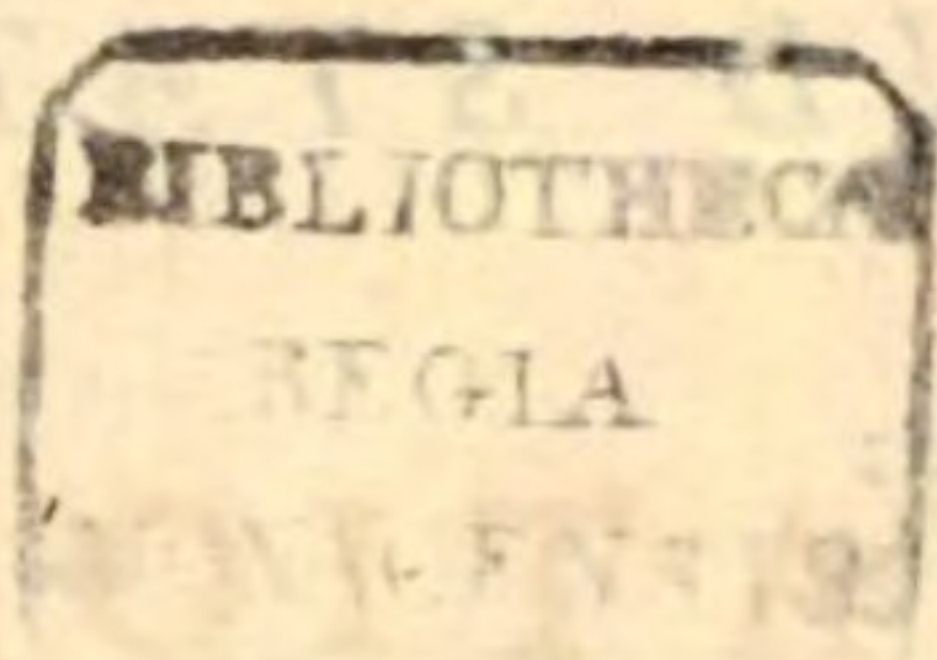
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1795.



from the Author.

W. of P. 100.



AN ENQUIRY

ORIGIN NATURE AND EXTENT

EDWARD LORD TURLOW

ECCLIASTICAL AND CIVIL AUTHORITY

BRITISH CONSTITUTION

BY FRANCIS FLOWERY, ESQ.

LONDON: Printed for C. and J. Robinson, Paternoster-Row, 1795.



DEDICATION.

TO THE RIGHT HONOURABLE

EDWARD LORD THURLOW,

LATE

LORD HIGH CHANCELLOR OF GREAT BRITAIN.

MY LORD,

WHEN I attempt the important task of investigating the origin nature and extent of ECCLESIASTICAL and CIVIL authority in this country upon grounds hitherto untried or neglected, I commit myself with confidence to the Public upon the delicate subject, under the patronage of YOUR LORDSHIP, who for so many years have administered BOTH, even in the last resort, to the peculiar satisfaction and happiness of your country-

a 2

men,



men, and with the highest honor and reputation to yourself. The deprivation of your talents in that exalted station your country most sorely laments. Permit me, my Lord, to indulge the flattering conviction, that in adhering closely to the principles of our laws and constitution, I have humbly followed the example of that heroic firmness, to which you have so nobly sacrificed the first dignity of the British Empire. I am gratefully sensible of the honor of being permitted to subscribe myself with the highest esteem and respect,

My Lord,

Your Lordship's

Devoted humble Servant,

FRANCIS PLOWDEN.

ESSEX STREET

June 1795.



## P R E F A C E.

IN the following work I have largely committed myself upon the most delicate subjects of discussion. I have endeavoured to speak as freely of all opinions, as the earnest investigation of truth requires. If any reader then shall feel sore at what I have said, I previously entreat him to lay the unintended cause of offence to the account of that freedom of thought, by which each claims the right of maintaining his own opinions. I lie not open to the imputation of provoking the discussion of matters, that may appear to some pregnant with irritation scandal and danger. For at a time, when I thought a serious attack was aimed at our Constitution, I stood forward in her defence by displaying, according to my slender means, the real and true grounds of her excellencies: this brought forth my *Jura Anglorum*. Under a strong desire to displease none but the enemies of the Constitution, and too vain a conviction, that I had avoided all reasonable grounds of offence, I was somewhat surprised to receive from a quarter the least suspected, a publication under the following title: "A Letter to Francis Plowden Esq. Conveyancer of the Middle Temple on his Work, entitled  
" *Jura*



*"Jura Anglorum, by a Roman Catholic Clergyman.*

*"Non tali auxilio, nec defensoribus istis tempus eget."*

The author appears to have written under an enthusiasm of sincerity and zeal, which has produced a conviction upon my mind, that I have not sufficiently developed the subjects I undertook to explain in my former work. And there needs no other proof of the importance of those subjects, than the holy indignation, with which my Reverend Correspondent prosecutes my supposed deviations from truth in treating of them. Had his reflections and censures been personal, I should have passed them over unnoticed. But when I am arraigned for having "enhanced the cause I undertook to defend by making essential sacrifices of my own and others' unalienable rights:" for having "attempted to establish in man a right to choose his own religion:" for having broached "principles repugnant to holy writ and destructive both of one religion and the other:" for having ceased to be "a man of principle and honor by acquiescing in the consequences and effects of the revolution of 1688:" for having "acted inconsistently with the character of a Catholic, 1st, in having approved the principles of the revolution—2dly, in making the canon law dependent upon the temporal legislature—3dly, in attributing to the rulers of the realm powers over the church and its property:" and for having "struck a deadly blow to the vitals of that church, which I once loved and revered;" it will perhaps be allowed by my readers,



## P R E F A C E.

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readers, that further elucidation was wanting to these subjects, which are highly important to the well-being of the British Constitution.

I affect not to write controversy. After I had attempted to submit to my countrymen a fair exposition of the British constitution, I found, that I had been deficient in developing some material parts of it. I shall therefore seek no further apology for offering to them these ulterior disquisitions into the fundamental principles and mutual relations of Church and State.

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readers, that further elucidation was wanting to their objects, which are highly important to the well-being of the British Colonies.

I affect not to write controversy. I have endeavored to submit to my countrymen a fair exposition of the British constitution. I found, that I had been deficient in developing some material parts of it. I shall therefore bestow no further apology for offering to them these additional discussions into the fundamental principles and mutual relations of Church and State.



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## A LIST of the AUTHORS and BOOKS quoted or referred to in the Work.

*Anonymous*—Letter to Francis Plowden Esq. upon his work entitled *Jura Anglorum*, by a Roman Catholic Clergyman.

Reasons Answers and Replies concerning Episcopacy 1660.

Regale and Pontificate.

Vox Populi 1690.

State Tracts 3 vol. fol.

Wit against Reason by a Roman Catholic Divine.

Inquiry into Dr. Troy's Pastoral Instructor.

Fears and Dangers fairly displayed, being a new Memorial of the Church of England 1706.

An Account of the Growth of Knavery under the pretended Fears of Arbitrary Governments and Popery, with a Parallel betwixt the Reformers of 1677 and those of 1641 in their Methods and Designs.

A Relation of two free Conferences between Father La Cheze and four considerable Jesuits touching the present State of the Affairs of the Romanists in England.

*Anonymous*—Les Memoires du Clergé.

True State of the Controversy between the Bishop and Dean of Carlisle touching the Legal Supremacy.

History of the Church of Great Britain.

History of the Inquisition at Goa.

Allegambe, Scriptor. Soc. Jesu.

Allen, Cardinal, An Admonition to the Nobility and People of England and Ireland concerning the present Wars, &c.

Ambrose, St. Sermons.

Antonius de Dominis, de Republicâ Ecclesiasticâ.

Atterbury, Rights Powers and Privileges of an English Convocation.

Augustine, St. Sermons—De Heresi—Confession—Epistolæ contra Fund.

Bacon, Nathaniel, Discourse of the Government of England.

Barclay, William, De Potestate Papæ in Principes Christianos.

Becanus, de Republicâ Ecclesiasticâ.

Bede, Venerable, History of the Church of England.

Bellarmino, De Laicis—De Pontif. Rom.

Bernard, St. Epistles.

Berrington, Rev. Jos. Memoirs of Gregorio Panzani.

Beveredge, Dr. Annotations on the Pandectæ Canonum.

Bilson, Bishop of Winchester, Of Christian Subjection.

A

Binnius



- Binnius, Councils of the Church.  
 Blackstone, Judge, Commentaries.  
 Bossuet, *Defensio Cleri Gallicani*.  
 Bouhour's Life of St. Ignatius.  
 Bracton, Of the Laws and Customs of England.  
 Bramhall, Archbishop of Armagh, Schism guarded.  
 Brooke, Abridgment of the Law.  
 Buchanan, *De Regimine Scotorum*.  
 Bulla Cœnæ.  
 Bull of Pius VI.  
 Burne's Ecclesiastical Law.  
 Burnet, Bishop, History of the Reformation.  
 Burke, Edmund, Reflections on the Revolution of France.  
 Busenbaum, (Jesuit) *Theol. Mor.*  
  
 Cabbafutius, *Theo. and Prax.*  
 Carleton, Bishop of Chichester, Treatise of Jurisdictions.  
 Chrysostome, St. Homilies.  
 Coke, Sir Edward, Institutes—Reports.  
 Comber on Tythes.  
 Collyer, Jeremy, Church History.  
 Common Prayer Book.  
 Concilia—Binnii et aliorum.  
 Cornelius à Lapide (Jesuit), *Opera Theologica*.  
 Cotton, Sir Robert, Abridgment of the Records of the Tower.  
  
 De Marca de *Concordantiâ Sacerdotio et Imperio*.  
 Doleman on the Succession.  
 Dodd, History of the Church of England 3 vol. fol.  
 Dugdale, History of the Spanish Inquisition.  
 Dyer, Gov. An Enquiry into the Nature of Subscription to the 39 Articles &c.  
  
 Englefield, Sir Francis, (one of the authors of Doleman).  
 Filmer, Sir Robert.  
 Fitzherbert's *Natura Brevium*.  
  
 Fleetwood, Bishop, Account of Church Government and Church Governors.  
 Fleta, Commentary on the Laws of England.  
 Fleury, Ecclesiastical History—Discourse upon that of the first six centuries.  
 Friend, William, Thoughts on Subscriptions to Religious Tests.  
  
 Gerson, Chancellor of the University of Paris.  
 Gibson, *Codex Juris Ecclesiastici*.  
 Godolphin's *Repertorium Canonicum*.  
 Godwin, Political Justice.  
 Grotius, Hugo, *Votum pro Pace*.  
  
 Hale, Sir Matthew, History of the Common Law—Pleas of the Crown.  
 Henry, King, VIII. *Defensio Sacramenti contra Mart. Lutherum*.  
 Heylin, Rev. John, *Κεῖμηλια Ἐκκλησιαστικά*.  
 Herbert, Lord of Cherbury, Hist.  
 Hierome, St. contra Jovinianum—in Malach.  
 Hicke's Christian Priesthood asserted.  
  
 Horsley, Dr. (Bishop of Rochester), Review of the Case of the Protestant Dissenters—Sermon on the 31st January.  
 Hoveden, Roger, History.  
 Hurd's, Dr. (now Bishop of Worcester) Dialogues—Life of Bishop Warburton.  
  
 James, King, Apology for the Oath of Allegiance—Premonition to all most mighty Monarchs Kings Free Princes and States of Christendom.  
 Jewell, Bishop, Defence of the Apology for the Church of England.  
  
 Kennet (Bishop of Peterborough) Rights of Convocation.  
  
 La Croix, Soc. Jesu, on Busenbaum Theologia, 9 vol. 8vo.  
 Lessius, (Jesuit) *De Jure et Justitiâ*.  
 Limborch,



- Limborch, History of the Inquisition.  
 Linwood, Exercit. de Testament.  
 Locke, John, On Government.  
  
 Malmesbury, De Gest. Pol. Anglor.  
 Manning, Conversion and Reformation compared.  
 Manwaring, Roger, Sermons on Religion and Allegiance.  
 Melancthon, Disput. de Jure Magistrat.  
 Milner, Rev. Divine Right of Episcopacy—Ecclesiastical Democracy detected.  
  
 Oslander, Epist. Histor. Ecclesiasticæ Centur.  
  
 Paine, Thomas, Rights of Man.  
 Parsons, Robt. Jesuit, Answer to Sir E. Coke's 5th Report—Discussion of Mr. Barlowe's Answer—A Treatise tending to Mitigation towards Catholic Subjects in England against the Seditious Writings of Thomas Moreton minister 1607.  
 Paley, Princ. of Moral and Polit. Philosophy.  
 Paul, Father of Servita, History of the Venetian Inquisition.  
 Peirson, Dr. Bishop of Chester, Exposition of the Creed.  
 Pey, Abbé, De L'autorité des deux Puissances.  
 Pithou, Peter, Liberties of the Gallican Church.  
 Plowden, Rev. Chas. Considerations on the Modern Opinion of the Infallibility of the Holy See—Remarks on a Book entitled Memoirs of Gregorio Panzani &c.—Observations on the Oath proposed to the Roman Catholics.  
 Plowden, Francis, Jura Anglorum—History of the last 20 Months—Case stated.  
 Polydore, Virgil. Histor.  
 Priestley, Dr. On Government—Letters to Mr. Burke.  
  
 Roger's Vindication of the Civil Establishment of Religion.  
  
 Rotuli, Clausi Parliament.  
 Rousseau, Jean Jaques, Contrât Social.  
  
 Sacheverell, Dr. Sermon.  
 Salkeld's Reports.  
 Selden, John, History of Tythes—Discourses 1689—Dissertation upon Fleta.  
 Sidney, Algernon, Discourse concerning Government.  
 Sherlock, Dr. Discourse of the Nature Unity and Communion of the Catholic Church—Summary of the Controversies between the Church of England and of Rome.  
 Schmidt, Opera Theologica.  
 Shower, Sir Bartholemew, A Letter to a Convocation Man concerning the Rights Powers and Privileges of that body.  
 Statutes at Large.  
 Strange, Sir John, Reports.  
 Suarez de Naturâ Legis in communi.  
 Sweet, John (Jesuit), Discovery of the Dalmatian Apostate.  
  
 Thomas, St. Aquinas, Opera Theologica.  
 Thorndyke, Rev. Right of a Christian Church in a Christian State.  
 Turner, Rev. Vindication of the Rights of the Christian Church.  
 Troy, Dr. Archbishop of Dublin, Pastoral Instruction.  
  
 Viner's Abridgment.  
  
 Wake, Archbishop of Canterbury, The Authority of Christian Princes over their Ecclesiastical Synods asserted. Walsingham.  
 Warburton, Bishop, Alliance of Church and State—Divine Legation of Moses.  
 Winter, Sir John, Observations on the Oath of Supremacy.  
 Whitaker, Rev. J. Real Origin of Government, 1795.  
  
 Year Books (Reports of early Cases).



## ERRATA.

- Page 41. Lin. penult. for *law* read *laws*.  
164. In the note for *ἰπω* read *ἰπερ*.  
254. Lin. 4. for *was* read *were*.  
406. Lin. 20. for *affects* read *affected*.  
462. Lin. 16. for *contentions* read *contentious*.

The author was misled in point of fact and was not justified in what he inferred in the Note page 299.



INTRODUCTION.

A N

E N Q U I R Y

INTO

THE ORIGIN OF

ECCLESIASTICAL AND CIVIL AUTHORITY.

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B O O K I.

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C H A P. I.

INTRODUCTION.

*Motives for the Publication. Apology to Divines. Duty of Good  
Subjects to close rather than widen the Breach of Separation.*

WHILST the press teems with an endless variety of publications, powerful indeed must be the provocative, that stimulates an author to excite the attention of a wearied public. In the present agitated state of ferment and alarm, prejudice and prepossession seem to have marshalled every man into his station: discussion and investigation are not only become generally fruitless, but too often bring suspicion and danger upon the attempt. Fashionable as it now is to exclaim against

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the

BOOK I.  
CHAP. I.  
Motives for  
publication.



BOOK I. the disclosure of truth to the multitude, few men, I presume  
CHAP. I. will openly disavow the golden maxims, that honesty is the best policy, and plain truth the only sure stand against error and malice. The fear of personal enmity, and the hope of favour and interest, but ill accord with the avowed profession of searching and developing the truth.

Practical duties of every Christian ought to be understood by all.

The subject I have taken in hand is of a complex and delicate texture: it is impossible to treat it fully, without giving into some matter of a theological nature. I am aware of the propriety of the old adage, *tractent fabrilis fabri*: and I certainly mean not to write a theological Essay. There is however a line of practical duty, in which every human being is by Providence destined to move, and therefore enabled to know how to direct his steps. If being a Layman and a Lawyer I attempt to discuss no more than my practical duties oblige me to understand, I shall hope to give no offence to Divines, by appearing to invade their province; having no further than the common pretension of every Christian, that of having learned my Catechism. Under this impression I lately met with a very consolatory declaration from a Divine, more than commonly jealous of all theological prerogatives: \* “ Highly do we deem of the learned, the eloquent Bossuet; but then, in a matter of fact which interests faith, Bossuet, and an ordi-

\* Considerations on the Modern Doctrines of the Fallibility of the Holy See, &c. p. 10.



"nary man who has learned his Catechism, are equally en-  
 "abled to judge: each is furnished with the same principles, and  
 "he will apply them best who is most exempt from preju-  
 "dice."

BOOK I.  
 CHAP. I.

In the present rage for novelty on one side, and for re-  
 viving exploded and dangerous doctrines on the other, to investi-  
 gate impartially the origin, nature, and extent of *authority*, is  
 a task almost too desperate to attempt. As difficult as it may  
 be to find a person, who openly disclaims any necessity of sub-  
 mission and obedience to authority, so difficult almost is it to  
 fix upon one, who, admitting the existence of authority both  
*spiritual* and *temporal*, fairly distinguishes one from the other,  
 and unequivocally submits to the binding obligation of both  
 within their respective jurisdictions. For the clearer investiga-  
 tion of the subject in hand, I shall confine myself, as I did in  
 the *Jura Anglorum*, to the consideration of the Constitution  
 and Establishment, in which Englishmen are required to prac-  
 tise their submission to both these powers or authorities. I af-  
 fect not to write a Treatise upon a theological question. As an  
 Englishman, a Christian, and a Roman Catholic, I am under  
 many obligations both as to belief and practice. Of these du-  
 ties or obligations I claim the right and profess the intention  
 of speaking with freedom and impartiality. Slight, I presume,  
 if any, will be the difference of what I shall advance upon  
*spiritual* authority from what the generality of Protestants also

Few persons  
 distinguish  
 between spiri-  
 tual and tem-  
 poral authori-  
 ty.



## BOOK I.

## CHAP. I.

It ought to be the wish of all to close the breach between different Societies of Christians.

admit and allow of. It must be the general wish of all peaceable Subjects and good Christians, not to widen, but to close, if possible, the breach that exists between different societies of Christians. If a man adhere to the Roman Catholic Religion, because he thinks it the Mother Church, from the communion with which none of her children ought to have separated, he must, consistently with that principle, wish his friends and countrymen as little removed from her as possible \*.

The author's intention to enforce submission both to spiritual and temporal authority.

In searching into the nature of authority *temporal* and *spiritual*, I do not mean to weaken either, but to inculcate and enforce submission to both. The subject interests all men: and I am indispensably challenged to it, by the sentence of condemnation passed upon me by my Reverend Correspondent, (p. 24,) "I am only astonished that you, who from your earliest youth were enured to a belief of the same doctrine in the Catholic Church, should have adopted, in your *Jura Anglorum*, a language so contrary to your belief."

Few persons, I believe, in this country have ever made more open and explicit declarations of their political and religious convictions than I have. It might perhaps have served my worldly interest to have wholly dissembled or renounced my

\* It pains me to read what my Reverend Correspondent says of our Protestant brethren, speaking of them, p. 4, "as men whose principles were never formed to coalesce in one common system."

faith:



## INTRODUCTION.

5

faith: but what end could I have in view to render myself equally immoral, by partially dissembling or denying the faith, which cannot be preserved pure but in entirety? I should thereby subject myself to numerous pains, penalties and disabilities for retaining my faith, and at the same time incur the moral criminality of renouncing it. In whatever I have heretofore published, I intended to express what I *really* believed: and in attempting hereafter to express what I still believe, I hope to say nothing but what will be consistent with the sentiments of most, and congenial with the feelings of all my countrymen.

BOOK I.

CHAP. I.

Folly and criminality of a partial denial of one's faith.

*Entirety*

In whatever situation, and in whatever country it is the fate of man to live, as a member of society, he can never be out of the reach of many moral obligations, which are imposed upon him by the Deity, a power superior to himself, fully competent to impose them, and by imposing them to bind his conscience to their performance. The compliance with these obligations is effected by the acts of social duty to our fellow-creatures, which consist in the observance of the civil or municipal laws of the State, which all its subjects must unexceptionably obey. The origin, nature, force, and obligation of these laws, will be objects of future investigation. Being a member of the British Constitution, I shall confine my observations to that alone. It is my wish to explain and develop more satisfactorily those principles of my *Jura Anglorum*, which, to my Reverend Correspondent, and may be to some others, appear not only new,

Man's conscience bounden by his Creator to obey the laws.



BOOK I. new, bold, and latitudinarian, but erroneous and dangerous.

CHAP. I. The apprehension of offending Divines by such discussions, is not peculiar to the present time or occasion. Thus did the Clergy cry out against the learned Selden, for favouring the world with his judicious and instructive History of Tythes\*.

Selden of-  
fended Di-  
vines by writ-  
ing of tythes.

“What hath a common Lawyer to do (so they murmur) with writing of tythes? But,” adds he, “I would their discretions also would designe out, to whom it belongs more to write the History of Tythes than to a common Lawyer.” So in writing my *Jura Anglorum* did I conceive it to be the immediate province of a Lawyer to examine, what rights, powers, prerogatives, privileges, pre-eminencies and authorities, the *Common and Statute Law* of England gave unto, acknowledged or presumed to exist in the King over the Clergy of this realm: and particularly what was meant, imported and imposed by the

The object of  
the *Jura An-  
glorum* pur-  
sued in this  
work.

Qualification Oath of Supremacy: and consequently what were the general principles, upon which these Laws of England were grounded. I shall presume no farther apology necessary for following up the same object I then had in view, which is to ascertain the nature, reason, and extent of that submission, which every Briton residing in this realm is obliged to pay to the *authority placed over him*.

Although I mean not to reply in form of controversy to my

\* Preface to his History of Tythes, p. xvii.



## INTRODUCTION.

7

Reverend Correspondent, yet I pay so much deference to what he says in contradiction to or condemnation of my former publication, as to admit that explanations and conclusions which I vainly thought satisfactory and undeniable, have to others appeared defective and false. But as I have publicly avowed certain principles, which I never can abandon, I feel myself under the indispensable duty of tracing them more deeply to their source, and developing them more minutely in their consequences and effects. If in doing this I run into pleonasm, I crave indulgence. It will be consonant with the principles and order of my *Jura Anglorum*, to consider first the choice of religion \*, especially as most of the prejudices against professors of the Roman Catholic Religion arise out of false notions, conceived of the universal obligation of adopting it without examination or conviction.

BOOK I.  
CHAP. I.

Apology for  
pleonasm.

\* The zeal of my Reverend Correspondent first broke out against what I said in my *Jura Anglorum* upon that head, p. 7.—“The first of your principles, which appears to me blamable, is the pretended right you attempt to establish in man to choose his own religion.”

CHAP.



## C H A P. II.

## CHOICE OF RELIGION.

*Liberty of Conscience. The free Choice retained as against the Society, not as against God. No Right in Individuals to judge the Consciences of their Neighbour. Theological Opinions thereupon, consonant with Good Sense.*

## BOOK I.

CHAP. II.  
Delicacy of  
speaking of  
the choice of  
religion.

Liberty of  
conscience af-  
fects all men.

IN a country which superabounds with a variety of religious opinions, no subject can be more delicate to handle than the Choice of Religion. It is the threshold over which we must pass, if we wish to preserve peace and charity with such of our fellow-subjects as differ from ourselves in religious opinions. It necessarily is the first object of our attention in considering the nature and effects of a *Civil Establishment of Religion*; for, upon the freedom of this choice, or in other words, upon *liberty of conscience*, every *Civil Establishment of Religion* is necessarily founded. The subject is interesting to all, because it affects all: for it would be as unwarrantable to presume, as it would be impossible to prove, that any particular individual had adopted his mode or system of religion from indifference, chance, example, prejudice, self-interest, or other temporal advantage. Every man, when he applies his judgment to the religion of his neighbour, is conscientiously bounden to



to allow, that his adoption of it was the free act of a free agent ; and whether it agree with or differ from that, which has received the civil sanction of the state, he is only warranted and justified in concluding, that by adopting it, he has exercised that *liberty of conscience* which supercedes all power and controul of the civil magistrate : essentially unjust then is every civil or temporal law, which persecutes man for his religious persuasion, by pretending to abridge or annul his *liberty of conscience*. Had I fortunately used the term *Liberty of Conscience*, instead of *Choice of Religion*, I had perhaps avoided the scandal which I appear to have given to my Reverend Correspondent by what I have said.

BOOK I.  
CHAP. II.

Injustice of laws that abridge or take away liberty of conscience.

Nothing was ever more remote from my thoughts or intentions, than to establish a general *right in man to choose what religion he pleases*, as my Reverend Correspondent makes me say, p. 18. It is evident from the tenor and context of my whole book, that the *right, freedom, liberty, or choice*, which I attribute to each individual of adopting a particular mode or system of religion, is retained by the individual, as against the community, which can neither direct, bind, nor controul his conscience ; but not as against God, to whom alone he is accountable for the religion he professes. I have said \*, “ Our dependance “ upon our Creator binds us indispensably to a grateful acknow-

Man accountable to God, but not to the community, for his religion.

\* Jur. Ang. p. 81, 82.



BOOK I. "ledgment of our existence, and a sincere and unreserved  
 CHAP. II. "tender of our minds and hearts to think and act as he shall  
 "require." This imports no right of election, as against God:  
 for what we are required by him to do, we have not the right  
 or free choice of rejecting: and I added, "That the light and  
 "grace which Almighty God communicates to his creature in  
 "consequence of this offering, are personally binding upon the  
 "individual to whom they are communicated; and consequently  
 "cannot be controuled by other human beings collectively or  
 "individually, who stand in the same predicament of exclusive  
 "responsibility to their Creator." And, again \*, "Every in-  
 "dividual human being has not only a right, but is under an  
 "indispensable obligation to adopt that religious cult or mode of  
 "worship, which after due deliberation in the sincerity of his  
 "heart he thinks his Creator requires of him." And elsewhere †,  
 "Our blessed Redeemer came on earth to establish the Christian  
 "Religion; and his injunction to mankind to submit to and  
 "adopt it, is mandatory and unexceptionable."

Obliged to  
follow the  
light which  
God gives  
him.

God's in-  
junction to  
adopt the  
Christian re-  
ligion manda-  
tory and un-  
exception-  
able.

Man has no  
right to  
choose in that  
in which he is  
bounden to  
obey.

Having so pointedly and unequivocally expressed my senti-  
 ments upon the *indispensable obligations* of man to act as God  
 shall require of him in the adoption of his religion, I cannot  
 admit myself open to the imputation of having asserted that as  
 against God, "Man has a right to choose what religion he

\* Jur. Ang. p. 83.

† Ibid. p. 85.

"pleases."



“pleases.” For it is self-evident, that man cannot possess a right to choose, against the indispensable mandate and requisition of him, whom he is bounden to obey.

BOOK I.  
CHAP. II.

I have moreover said \*, “When I speak of the adoption of religion, either by one or more individuals, I wish ever to be understood to speak of it, as of the free act of a free agent, and that the act of submission to, and adoption of it, must necessarily be the free and voluntary act of the individual. It was by preaching that our blessed Lord himself, and his Apostles, and their successors propagated and established the Christian religion: the effects of preaching are persuasion and conviction, and these essentially pre-suppose the freedom of the person to be persuaded and convinced †.”

Adoption of religion is the free act of a free agent.

The

\* Jur. Ang. p. 85, 86.

† As my Reverend Correspondent assures me, that my assertion runs “counter to the tenets of the Catholic belief, and therefore that it ought not to pass unamended in a Catholic Writer;” I entreat my readers to judge whether he do not in other words maintain precisely the same doctrine himself, p. 18. I readily grant that religion is free in the sense above mentioned, because it pleased the Divine Wisdom in making known the revelations of Christianity, so to temper the certainty of its revelations with the darkness and impenetrability of the revealed articles themselves, as to leave it within the free and uncontrouled power of the human mind to assent to such articles or not. If we were compelled by an irresistible evidence discovered in the revealed objects themselves to give our assent to them, as we often are in natural things, there would be no freedom, and consequently no merit in an act of faith, &c.



## BOOK I.

## CHAP. II.

Man bounden  
to seek and  
follow the  
will of God  
when known.

Religion as  
an intellectual  
right of the  
mind retained  
by man.

The adoption of the religion which God requires us to profess must necessarily be the free and voluntary act of the individual ; that is, every man is under a strict moral obligation to comply exactly with what God requires of him : and he is conscientiously bounden to search with the utmost sincerity and earnestness his divine will, as well as he is bounden to follow it, when communicated to him : and therefore said I that “ the light and grace which God communicates to his creature, “ are personally binding upon the individual to whom they are “ communicated :” but that which binds, leaves not a free choice or election to the person bounden. If it appear frivolous or tedious to attempt the proof of such palpable positions, it should not be forgotten that I am formally arraigned of error, for having advanced, after Mr. Paine, “ that amongst the natural rights which man retains, are all the intellectual rights, “ or rights of the mind ; consequently religion is one of those “ rights.” Now it must appear clear to every one, that in treating of the rights which man retains, I can only mean such rights as after his entering into society he does not transfer nor surrender to the society. In order to explain the nature of that intellectual right, which man was said to retain in society, I should have presumed it sufficient to say, that independently “ Now the combination of these and other circumstances leaves it, I say, free “ to the mind of man, to agree or not to the revealed articles of the Christian “ religion. Religion therefore, in the sense I have explained, is unquestion- “ ably free.”

of



of society, every individual retains the right and liberty of a free and uninterrupted communication and intercourse with his Creator. I had moreover in the same page added, "that the light and grace, which Almighty God communicates to his creature, are personally binding upon the individual to whom they are communicated;" and I drew this express conclusion, "they cannot consequently be controuled by other human beings, collectively or individually \*."

BOOK I.  
CHAP. II.

It

\* It is singular, after all the abuse, which my Reverend Correspondent heaps upon me, for having pretended to enlarge the liberty or choice of man in religious matters, which brought me to the conclusion that I expressed in my *Jura Anglorum*, p. 83. "Every individual human being has not only a right, but is under an indispensable obligation to adopt that religious cult, or mode of worship, which after due deliberation in the sincerity of his heart he thinks his Creator requires of him," that he should have fully expressed the very same opinion with myself; for, says he, p. 34, "Doubts may subsist in a conscientious and well-meaning Christian concerning two opposite religions, the one false, the other true, in which circumstances, the doubting person ought not precipitately to abandon the false, and adhere blindly to the true religion, without considering the respective merits of each: since such choice would be unreasonable and imprudent, which qualities are incompatible with the discretion and good sense, which must always attend a supernatural act of divine faith. But he is bound to examine and weigh the motives on each side of the question." How can this be performed without due *deliberation* and *sincerity of heart*? And has not a person who has applied due *deliberation*, and acted in the *sincerity of his heart*, done whatever God requires of him, and whatever it is competent for a human creature to do? Why then does he upbraid me



BOOK I.  
CHAP. II.

No man au-  
thorised to  
pass judg-  
ment against  
his neighbour  
on account of  
the religion  
he professes.

It has been my misfortune to have scandalised and offended some other of my readers, as well as my Reverend Correspondent, by declaring to the public the nature of that judgment, which I felt myself called upon to pass upon my neighbours, who differ in their religious sentiments from myself. Now it not only is a general maxim of common sense, but the express doctrine of Roman Catholic Divines, that every man is obliged to follow the dictates of his own conscience, even though erroneous, provided he be sincere in forming it. *Non tantum conscientia recta sed etiam inculpabiliter erronea dictans aliquid per modum præcepti obligat, ut eam sequaris; et, si contra facis, peccas: &c.* La Croix de Conscientiâ quotes St. Thomas, vol. i. l. i. n. 1. This *inculpable error* can only subsist, where there is full sincerity of heart, for he is not sincere, who omits to do that, which is necessary to form his conscience; and if he omit to do that, which is necessary to form his conscience, it may indeed be erroneous, but not *inculpabiliter* so. Now this full sincerity of heart is an internal affection of the soul, of which no external evidence can be had; no man therefore can determine, whether the conscience of his neighbour be culpably or not culpably erroneous: he cannot me with adopting language so contrary to my belief? Why accuse me of giving a sanction to error, by declaring that we have a right to choose a religion, which we know for certain to be erroneous? The most malicious and racked distortion of my words cannot extract this deduction from them; for to seek truth with due deliberation, and follow it with sincerity of heart, formally exclude the voluntary adoption of known error.



therefore, without finning himself, condemn those actions of his neighbours as sinful, which are produced by a conscience *incul-* BOOK I.  
CHAP. II.  
*pabiliter* erroneous : and of this he cannot judge. So said truly the author or authors of *Doleman upon the Succession*, whom at least my Reverend Correspondent will not disbelieve, (part i. p. 172.) “ All that is not of faith, or according to a  
“ man’s own belief, is sin to him ; for that it is against his own  
“ conscience, judgment, and belief, believing one thing and  
“ doing another.”



## C H A P. III.

## OF THE GENERAL SOURCE OF AUTHORITY.

*What Authority is. Man's first Obligation to his Maker. What is Spiritual Authority or Power. What Temporal. The Obligation of Submission to both Powers imposed by God. Both originate from God.*

BOOK I.  
CHAP. III.  
What authority is.

Subordination is coeval with society.

WHAT I mean by *authority* is a right capable of being vested in one or more human beings, of commanding and enforcing the obedience of their fellow-creatures; which, when once vested, gives a right or power of commanding and making oneself obeyed in those things, to which the power extends: hence arise the duty and obligation of all human beings of submitting to lawful authority, wherever it subsists. As subordination then is necessary for the preservation of society, to which God has adapted mankind in the state of their actual existence, it is clear, that authority must be coeval with society itself. Man formed by the gracious Omnipotent to the dignified likeness of his divine self consists of a soul and body. Whether any of his mental operations can in this state of union be produced independently of the body, to which the soul is united, is a subject for metaphysical disquisition, into which I shall not presume to dive. In whatever light man is considered, he never should be abstracted from



from the dependence upon his Creator; for he cannot by any human means be released or absolved from the duties and obligations, by which he is bounden to his Creator. These are paramount to and supersede every other consideration; they are independent of, but regulate and enforce all the subordinate duties and obligations of the social or civil man: in a word, they alone bind the conscience, and are therefore to be carefully pointed out and ascertained, as they are sacredly to be observed and submitted to.

BOOK I.  
CHAP. III.

Man's first  
obligations  
to his Maker.

As I write for a Christian nation, I do not feel it my duty to prepare the way to the discussion by any proofs of the existence of the Deity, or of his having descended upon earth to teach us the doctrines of a revealed religion, and to establish and perpetuate to the end of time a particular form of *spiritual* government and legislation. Presuming then, that Christ has established a church upon earth, which is to last *one and the same* to the end of time, is to admit, that there do and will exist powers to rule govern and preserve that church as long as he has promised it shall last. The necessary inference is, that there exists upon earth a power or authority, which every Christian is obliged to obey, and this I call *spiritual, ecclesiastical, or divine*. The existence of society proves the necessity of order and government, by which alone it can subsist: now as the nature of man imports the necessity of society, and from God man received his nature,

What is  
meant by the  
*spiritual* au-  
thority.



BOOK I. ture, it follows of course, that from God immediately proceeds  
 CHAP. III. the necessity of that power or authority, which constitutes govern-  
 What is tem- ment amongst men, and this I call *temporal, civil, or human*.  
 poral autho-  
 rity or power.

The obliga-  
 tion of sub-  
 mitting to  
 both autho-  
 rities imposed  
 by God.

Both origi-  
 nate from  
 God.

Temporal au-  
 thority from  
 the begin-  
 ning of the  
 creation.

Spiritual au-  
 thority to  
 which Chris-  
 tians are sub-  
 ject, only  
 from the  
 foundation  
 of Christiani-  
 ty.

The very idea of authority imports the duty and consequently the obligation of submitting to it. If God therefore have established a spiritual authority in his Christian church upon earth, it is not optional but obligatory in every Christian to obey it: and as to the *human or civil* authority, which is essential to the continuance of society, God in framing man for society, not only imposed upon him the implicit obligation of submitting to it; but has more expressly enforced the general precept of obedience in the Scriptures, in the strongest words, and exemplified the precept in the person of his own sacred humanity. These two powers or authorities, though in themselves widely different from each other, proceed originally and fundamentally from one and the same source, *God*: man therefore is equally bounden and obliged to obey them both. The institution of *temporal or civil* authority is an effect of the general dispensation of God's providence in creating mankind, which never has been, and probably never will be altered from the creation of man until the consummation of the world. The institution of that *spiritual or ecclesiastical* authority, to which Christians are obliged to submit, was the special grace and favour dispensed to us by the mercy and bounty of our Redeemer, when he came upon earth to establish the



the law of grace upon the abolition of the less perfect system BOOK I.  
of the Jewish legislation. It will therefore be more orderly, first CHAP. III.  
to consider that *temporal, civil or human* authority, which has  
invariably subsisted the same from the beginning of the world,  
and will continue the same to the end of it; and then that *spi-*  
*ritual, ecclesiastical or divine* authority, which at a particular period  
of time our beneficent Creator was pleased, for our spiritual be-  
nefit, to establish upon earth, when he came to reveal to us the  
Christian religion.



## C H A P. IV.

## OF TEMPORAL, CIVIL, OR HUMAN AUTHORITY.

*Origin of Human Power. Physical and Moral Laws by which Mankind is preserved. Rights of Man. General Physical and Moral Laws invariable: where God has dispensed with them, it was a miraculous Exception, proving the Rule. Presumption in Man to expect a Repetition of such Miracles. His Duty to submit to the regular Establishment. How all Power is said to be from God. The Jewish Theocracy an Exception from the general moral Laws. How the conscientious Obligation of submitting to Civil Laws arises. Exemplified by the Nature of Property. Of the Jure Divino Right to Temporal Power. Fairly explained by St. Chrysostom.*

BOOK I.  
CHAP. IV.

Temporal  
authority or  
power institu-  
ted by God.

Authority  
and submis-  
sion correla-  
tives.

AS God created man for society, and order and government are necessary for its preservation, it follows, that the *sovereign civil* power or authority, which is requisite for the subsistence of order and government, must also have been instituted by God: for as authority (which is a right to command) and submission (which is an obligation to obey) are correlatives, it must be admitted, that when God instituted authority, he enjoined submission to it. Admitting that *sovereign civil power* is not merely



merely an *ens rationis*, a metaphysical supposition or *datum* to argue upon, it behoves us to consider it as an existing reality, and ascertain in what it consists. As man is a compound of the *animal* and *rational*, it was necessary, that God should have established both *physical* and *moral* laws for his preservation and continuance; they are both general effects of his benign providence, and were established as it were by the omnipotent act of forming a self-multiplying species of rational beings. The *moral* and not the *physical* order of his dispensations is the object of our present investigation.

BOOK I.  
CHAP. IV.

Moral and  
physical laws  
of mankind.

The essential nature of man is homogeneous, and in this general view of mankind all men are equal; but the exigencies of society, for which they are created necessarily import a distinction, preference, and superiority of some individuals over others: these alter not the nature of man, they arise out of the indefinite variety of incidents, which chequer the various scenes of society: they can be neither claimed nor enjoyed by any individual independently of the society, which originally granted them, nor retained and holden against the will of the society, which chooses to reclaim or abolish them: they are not in their nature absolute and independent, but relative and dependent rights.

Equality of  
man.

Rights of distinction in  
society not  
absolute nor  
irrevocable.

Such as God originally created man, such will he continue through the successive fluxion of individuals to the last accounting

ing



## BOOK I.

## CHAP. IV.

Moral and  
physical laws  
of mankind  
unchange-  
able.

Particular ex-  
ceptions con-  
firm the gene-  
ral rules.

God leaves  
effects to the  
operation of  
secondary  
causes.

The enacting  
power can al-  
one repeal.

ing day. Such *moral* and such *physical* laws as God at first established for the preservation and continuance of mankind and of society, such are we at all times to look up to without change or variation. If his omnipotency have in some instances been pleased to dispense with these general laws, the exceptions confirmed the rules, and the particular deviations proved the general and constant observance of the establishment. As it would then be absurd to suppose or expect, that God should enact or impose a new or specific law for any physical action of man, or that he should interfere with, or immediately direct such action of man, out of, or contrary to the natural course or agency of physical and secondary causes; so would it be equally absurd to suppose or expect, that he should institute either a new order or law for regulating the submission of man to the authority placed over him, or that he should immediately select, appoint, and delegate the individuals, to whom such obedience ought to be paid. The all-perfect providence and superintendence of the Deity over his creatures, are as wonderful in continuing the energy, as in instituting the perfection of the laws, by which they subsist. The sparrow, which falls not without his permission, falls by those laws, which he first instituted. It has been a merciful effect of his goodness to recall and fix our attention to his omnipotency in framing these laws, when he has chosen in some instances to change and vary them. It is an universal axiom, that none but the enacting power can repeal or alter the law. God has upon some occasions given the most stupendous



stupendous instances of his omnipotent controul, by miraculously suspending or inverting the laws, which he had imposed upon the physical order of the universe. He has also condescended for a certain period of time to select and delegate the persons, and to frame the civil or municipal laws, to which a particular community should for a certain time pay their submission and obedience. In the cases of these miracles, and in these theocratic appointments of the Jewish rulers and laws, we trace the evident deviation or exception from the general *physical* and *moral* laws, by which in all other instances it has pleased his Divine Providence to rule, govern, and preserve the universe. It would be presumptuous in man to expect a repetition of these extraordinary favours by the supernatural interference of Providence, and impious not to submit and square his thoughts and actions to those general laws, which God has graciously instituted for the regular government and preservation of mankind.

BOOK I.

CHAP. IV.

God's miraculous interference in the physical world.

His particular interference in legislating for his chosen people.

It is certain, that whatever effect is produced by a general rule or law, proceeds *immediately* from the rule or law itself; but *mediately* and fundamentally from the power or authority which established the rule or law. So when it is said that *there is no power but from God*, it is not meant, that no power can be enjoyed or exercised by man, but what is given to him immediately by God; but that no power is vested in man over his fellow-creatures, but in consequence of the general moral law which

Mediate and immediate effects of God's providence over man.



BOOK I.  
CHAP. IV.

Sovereign  
power insti-  
tuted by God,  
consequently  
obedience to  
it enjoined by  
his provi-  
dence.

which God has established : this is evident, because, wherever the Almighty condescends to mark out and appoint the individual, in whom this power shall vest, it is a direct deviation from the general established rule. And a deviation in a particular case from the law, by the author of the law, is a confirmation of it in all other cases, to which the exception does not apply. In this general and fundamental sense of power are verified the sayings of the Scriptures and the Fathers, which deduce all authority from God, such as, " All authority is from God : Through me Kings do reign : He is the Minister of God, &c." For, as society by the dispensation of God's providence is necessary for mankind, and government is necessary for the preservation of society, so is sovereign power necessary to support government, and therefore *sovereign power* is established by the general providence of God ; consequently submission to it is enjoined by that same providence. Obedience then to *sovereign, human, civil or temporal* power or authority is commanded by God, and becomes of course a conscientious duty of man. But since the observance of this duty can only be performed by the specific acts of individuals towards superiors or magistrates, it is requisite to enter more particularly into the detailed consideration of *human, civil, or temporal* power. There is no specific nor express command or precept of God, to vest it in any particular person or persons, nor in any particular manner, nor to any particular extent, nor at any particular time, nor upon any particular condition ; but the existence



istence of *civil* authority, and consequently the conscientious obligation of submitting to it, when lawfully exercised, is substantially and in effect enjoined by those general laws, which God has instituted for the preservation of the moral order of mankind, and which are therefore indispensably and uniformly binding upon every human individual, whatever be his station in the community of which he is a member.

BOOK I.  
CHAP. IV.

It was but in the special instance of the Jewish nation, that God selected a particular or chosen people or community, to whom he gave particular laws and particular rulers. This formed a theocracy, or a form of government immediately appointed by God; and it lasted for a limited period. It was a special favour conferred upon his chosen people, which he extended not to others. All the rest of mankind were therefore left to their free liberty to form themselves into whatever communities or societies they chose, and to delegate the sovereignty of *human* or *temporal* power and authority to whomsoever and in whatsoever manner they should find it reasonable and agreeable. Hence has arisen the endless variety of forms and modes of government, through the succession of all ages to the present time.

The Jewish  
Theocracy.

The rest of  
mankind left  
to their li-  
berty in mo-  
delling their  
own govern-  
ments.

The necessity of sovereign power and the duty of submitting to it are enjoined by the *general* dispensation of God's providence in the *moral* laws, by which he preserves and

E

governs



BOOK I.  
CHAP. IV.

No positive  
command of  
God to sub-  
mit to any  
particular so-  
ciety.

The society  
imposes no  
conscientious  
obligation  
upon man,  
though God's  
ordinance  
does.

In the theo-  
cracy a Jew  
was bounden  
to obey the  
law even  
when out of  
Judea.

governs the human species: but the injunction is not therefore the less conscientiously binding wherever it attaches. God commands no individual to choose or belong to any particular society or community; but requires of every individual to submit to the sovereign power of that community, to which for the time being he shall belong or reside in. God imposes upon no man an absolute and positive obligation of submitting to any particular laws or rulers of any community. This shews therefore that no community, nor civil power, nor human legislative body, can directly impose any conscientious obligation upon individuals: that directly and immediately arises from God's general injunction to all mankind, *to obey the powers that are*, for the preservation of the moral order established in the dispensation of his providence. An Englishman in China, as to any conscientious obligation, is as little bounden by the laws of England, or the commands of the King of England, as if he were a native of Canton. And on the other hand, a Chinese whilst in London is as conscientiously obliged to submit to the laws of England, and to obey the King of England as if he had been born within the ligeance of his Majesty. But where God was pleased immediately to interfere in the appointment of rulers, and in the formation of laws, the conscientious obligation of submitting to them was absolute: I presume therefore, that a Jew during the time of the theocracy, could not by quitting Judea, conscientiously throw off his obligation of obeying the divine appointee or ruler of Israel, or of submitting



mitting to the Jewish laws, which were enacted immediately by God, and personally bound every individual Jew, in whatever part of the world he might be.

BOOK I.  
CHAP. IV.

Far be it from me to derogate from the conscientious duty and moral obligation of submitting to the sovereign power of the State. I fully admit of all the texts of Scripture in favour of the constituted authorities: by the general dispensation of God's providence they are all originally and mediately from him, and he has thereby imposed upon each individual, as a social creature, a conscientious obligation of submitting to the sovereign power or authority of each society or community, in which he may reside. My meaning may be more clearly exemplified by speaking of another precept: *Thou shalt not steal* is a command of God, that equally binds the consciences of all men: but this precept is grounded upon the previous presumption of Society, and of private property and peace being necessary for the preservation of that society. Now although individuals be bounden in morality and conscience to respect the property of their neighbours, and although whatever we possess in this world proceed from God as creator and dispenser of all earthly blessings, yet it is not true, that God gives us *immediately* a right or title to our property. Man possesses property, not by *divine* but by *human* right. The actual occupancy and the exclusive possession of property by one individual against all mankind, the conveyance of it by certain forms to others during life, the transmission of it after

Duty of submission imposed by God,

exemplified by the precept *thou shalt not steal*.

Property possessed by human not by divine right.



BOOK I.  
CHAP. IV.

Borough  
English and  
Gavel-kind.

The precept  
which affects  
the consci-  
ence operates  
equally after  
as before the  
alteration of  
the law.

Difference  
between me-  
diate and im-  
mediate ap-  
pointment of  
God.

death to relatives friends or strangers, all depend upon the municipal laws of each different State. In one part of England the youngest son has as good a right or title by *Borough English* to his father's inheritance, as the eldest has in most other parts of England by *Common Law*: and in other parts of the kingdom all the sons have equal right to share their father's inheritance by *Gavel-kind*. The divine precept operates not differently upon Hereford, Kent, and the rest of the nation: but if the sovereign legislative power should alter the *Common Law* and the tenure of *Borough English* into *Gavel-kind*, so that all the sons should equally divide their father's inheritances, the precept, *Thou shalt not steal*, would be still equally binding the conscience, and would render it equally criminal in the eldest or youngest brother, who before the alteration of the law had possessed the whole of the estate, as in a stranger, to purloin and rob the property that should from thenceforth have become divisible amongst all his brethren. The sovereign power of the State, which enacts the law, and thereby vests the property, does not bind the conscience, though the purloining of the property creates the sin. The conscience is bounden by the divine precept, *Thou shalt not steal*. So is it with power or authority: God commands and enjoins submission to it; but the community gives it. Thus St. Peter speaking in the immediate and particular sense of *civil* or *temporal* power or authority, calls kings *a human ordinance* (or appointment); and St. Paul speaking of it in the mediate or generical sense, calls magistrates the *ordinance of God*. In like manner,



manner, though no man pretend to hold his property *jure divino*, BOOK I.  
yet the Scriptures speak in the same generical manner of it, *The Lord gave, the Lord took away, &c.* CHAP. IV.

It is not the intent of this work to prove every position, that I have advanced in my *Jura Anglorum*, which my Clerical Correspondent has questioned denied or condemned, by all the arguments and authorities that can be framed or collected: but merely to say so much as will suffice to explain my full and fair meaning, and to prove, that in ascertaining the rights duties and obligations of a British subject, I have in no manner deviated from the faith and practical duties of a member of the Roman Catholic Church. I shall ever maintain them to be perfectly compatible with each other; or rather, that the strongest motives and incentives for preserving the former are the duties and obligations imposed by the latter.

The spiritual duties of a Roman Catholic not incompatible with the civil obligations of a British subject.

The fundamental principle of all sound doctrine upon the rights duties and obligations of subjects is, that the sovereignty of all *human civil or temporal power or authority* is immediately derived from, and constantly and unalienably resides in the people of each separate community: those who deny this principle assert, that neither power nor authority can be derived from any other source than from God, and that the possessor, whoever he be, receives it immediately from God. Should I therefore, *un-*  
*experienced in the nicety of theological disquisition*, as my Reverend

All human authority derived from and resides unalienably in the people.

Corre-



BOOK I. Correspondent represents me (p. 26), again repeat, that the  
 CHAP. IV. moral obligation of submitting to the sovereign *temporal* or  
*civil* power arises out of the general order of God's providence,  
 which has rendered government necessary for society; and that  
 even by the Christian dispensation God has made no alteration in  
 the nature of *human temporal* or *civil* power or authority: but  
 that the formation of different governments, and the collation and  
 investiture of all *temporal civil* or *human* authority sovereign  
 and subordinate are effected and given by each separate commu-  
 nity, I shall gain neither credit nor belief from those, who censure  
 or contradict me upon the ground of my *inexperience in the nicety*  
*of theological disquisition*. I must therefore necessarily recur to the  
 authority of some person against whom this fatal objection does  
 not lie. St. Chrysostom in his twenty-third Homily on the  
 Epistle to the Romans expressly says, "that Jesus Christ gave  
 "not his laws with the design to overturn the received forms  
 "of government:" and in explaining the words of the thirteenth  
 chapter, "For there is no power but what is of God," the holy  
 Father shews with the most pointed precision, that the divine  
 ordinance goes only to the general necessity of temporal power,  
 but not to the specific form of the government, nor to the  
 appointment of the persons in whom the authority is vested.  
 "What do you say then, is every prince constituted by God?"  
 "That says he I do not say; for I am not now speaking of every  
 "particular prince, but of the thing itself" (*i. e.* of tempo-  
 ral power): "for that principalities exist, that some command  
 "and

St. Chryso-  
 tom's opinion  
 upon the *jure*  
*divino* right  
 to temporal  
 power.



“and others obey, that all things are not carried on rashly and  
 “without order,” he says, “is the effect of the divine wis-  
 “dom.” Wherefore also he does not say, “There is no prince  
 “but who is of God,” but he treats of the thing itself (*i. e.*  
 of temporal power), saying, “There is no *power* but what is  
 “of God.” Now a prince is constituted by those, who make  
 him prince, and give him the power of a prince; but if God  
 make the prince and give him the power of a prince, he con-  
 stitutes him prince, and therefore the prince holds his power  
*jure divino*, or immediately from God: but according to  
 St. Chrysostom the prince is not constituted by God; therefore  
 he is not made prince nor does he receive the power of a prince  
 immediately from God. Hence it undeniably follows, that the  
 sovereign power of each State is given and conferred *immediately*  
 by the people in consequence and by virtue of the general law  
 of God’s providence, which therefore obliges the conscientious  
 submission of all mankind unto it.

BOOK I.  
 CHAP. IV.

God gives  
 not imme-  
 diately the  
 power to the  
 prince.



## C H A P. V.

## OF HUMAN OR TEMPORAL LEGISLATIVE AUTHORITY.

*The Legislative Power essentially Sovereign. Of the Deposit of Sovereign Power in One or more. Of Absolute Monarchy. In what consists the conscientious Obligation of Civil Obedience. Super-excellence of the British Constitution. Dangerous Tendency of Absolute Monarchy to a Dissolution of Government. Passive Obedience and Non-resistance not applicable to our King.*

BOOK I.  
CHAP. V.

The sovereign power essentially in the legislative.

IN whom the sovereignty resides, in him the legislative power exists: legislation is the direct emanation of the sovereignty; it is the action of the sovereign power. To whomsoever the community freely delegates the right of legislating, in him her or them it reposes the sovereign authority. The legislative power then is unexceptionably binding upon the whole community, because it is the collective free sense of the majority, which binds the whole. There cannot exist any government, unless the sovereign power be deposited by the community in some person or persons, who can exercise it over the rest: for although by the providential ordinance of *God*, the principal or original right of sovereignty be vested in the community



at large, yet the actual formation of government is the act of their depositing this sovereignty in the legislative body. When they deposit it unconditionally in one individual, it establishes a pure absolute monarchy, by many called despotism, or absolute mastership. This form of government, which to us Englishmen appears a state of servitude, is as lawful a form of government as that of our own, in which we deposit the sovereignty in a king, lords, and commons: for it is as fully competent for a community to entrust the sovereignty to the uncontrolled discretion of one man as to many. Such absolute monarch has the same right and title to his authority or power, as has the parliament of Great Britain, viz. the free gift or disposal of the sovereign power or authority by the community. In such a monarch the full legislative power is as complete as in our parliament, and is equally binding upon the community, who by the general ordinance of God are as conscientiously bounden to obey the decrees and edicts of their king, as Englishmen are the acts of their parliament. The Emperor of China has neither more nor less power over the consciences of his subjects, than the parliament of Great Britain. The same duty of conscience is imposed upon the Chinese and the Briton to obey the laws of the country, in which they reside: and this by the ordinance of God's providence, which unexceptionably and equally affects all mankind. This providence operates by the light and law of nature upon every human individual, and cannot be dispensed with, but by a special and supernatural interposition of the superintending Deity

BOOK I.  
CHAP. V.

What is despotism.

Absolute monarchy as lawful a form of government as our own.

The emperor of China and the British parliament have the same power over their subjects.



BOOK I.

CHAP. V.

itself. Besides this, in order to effectuate the means of preserving and improving the ends of society, we find, that our blessed Redeemer made peace one of the leading precepts and ordinances of Christianity, and peace cannot be kept but by the submission of the minority to the will of the majority, which is expressed by the laws of each community.

God's precepts bind all men unexceptionably.

No conscientious obligation can be imposed upon man but by his Creator, and therefore all the precepts and injunctions, which bind the consciences of men upon general matter, are universal and unexceptionable to all mankind, and attach to the person of the individual in every place, on every occasion, and at all times. It is one and the same precept of God, that conscientiously obliges the Spaniard to obey his monarch, the Venetian his Doge and Senate, and the American the Congress of the United States : but as God has left to mankind the free disposal of sovereign power or authority, that is, as he has left it to the free choice of man into how many communities they shall divide, and what modes and forms of government they shall adopt, and when and how they may change and new-model them ; so his precept, which is unexceptionable and invariable, does not attach upon any specific government or laws, but absolutely affects the consciences of individuals, as they may successively live under all the possible forms and changes of human governments. The parity between human power and property is very close : for it is equally true, that no man of himself, nor all men of themselves, can give to

God gives civil power as he gives property, i. e. mediately.

any



any human creature the exclusive possession and free dominion of any part of this terraqueous globe, as that they cannot give authority or power over their fellow-creatures: but God, to whom all things belong, and to whom all creatures are subject, has established the ordinance of *civil* sovereignty, which enables man to vest and appropriate the goods of this world in particular individuals, and to confer upon them *temporal* or *civil* power and authority, for the purpose of preserving society, for which in his wisdom he has created the human species.

The variety and fluctuations of all political institutions demonstrate, that they are not immediately instituted by God. *Singulæ species regiminis sunt de jure gentium* (Bellarm.) Each nation has the right to choose its own government: all forms of government, and all modes of legislation answer the general design of God's providence in preserving, as he originally instituted, the social state of mankind. Although all societies or communities enjoy equal freedom or liberty of choosing, modelling, and changing their form of government; it does not follow, that they all use this liberty with equal discretion, wisdom, and efficacy: there is as much variety or difference in the use of this political freedom or liberty, as there is in the free use of the physical faculties of man: God's providence has a general superintendence over all human events; yet it is certain, that the particular designs of that providence are in the

Difference between the liberty of forming, and the prudence in choosing a particular form of government.



BOOK I.  
CHAP. V.

continuance of the present system of nature accomplished by the operations of secondary causes.

Preference of  
the British  
constitution  
over any sim-  
ple form of  
government.

All discussions upon the forms and perfections of civil institutions are reduced to this simple inquiry, which State makes the most prudent use of its liberty in framing its own government? As an Englishman, I claim the preference for our own: for that government is the most perfect, which is the most efficient in executing its commands and injunctions, the most impervious to wanton change, and the most remote from subversion and dissolution. Our judicious and admirable mixture of the three forms of government emphatically embraces the perfections, and obviates the dangers of the three different forms taken separately and distinctly; and therefore I hesitate not to conclude, that the English Constitution, if preserved in its purity, gives more energy, and promises more stability than any other existing form of government; therefore every true British subject should be anxious to preserve it in that purity, which can alone be accomplished by keeping up its political equilibrium. Nothing is so diametrically opposite to the principles of the British Constitution, as to establish a *jure divino* indefeasible right to the Crown, and to annex to it an absolute and uncontrolled use of sovereign power. Since God in the providential arrangements of his wisdom has rendered some sort of government necessary for society, it follows, that to resist or subvert



vert any lawful arrangements of human government is not only an act of immorality towards God, but the greatest of all political crimes, since it tends immediately to introduce the greatest of all political evils, *anarchy*. The worst then of all governments is that, which has the strongest tendency to introduce anarchy. And that this is absolute monarchy, I think it not difficult to prove.

BOOK I.  
CHAP. V.

Monarchy  
the most lia-  
ble to the in-  
troduction of  
anarchy.

As each community has of itself an absolute right to frame its own form of government, or in other words, to deposit its sovereignty with whom it chooses, it is accountable to no human power for the manner, in which it may exercise this right. The act of making this deposit is nothing more nor less than a deputation or power of attorney, not irrevocable, from the community at large to their governors to use over them such powers as each individual, independently of any society or formation of a community, would have possessed. It is as free to give it to one person absolutely and unconditionally, as to delegate it to several with limitations, conditions, and control. The formation therefore of the late absolute monarchy of France was as free an act of the French community or nation, as the establishment of our mixt government by king, lords, and commons. But which of the two governments was the more open to anarchy, and consequently the more exposed to dissolution? The first step towards a dissolution of government is the discontent of its subjects with the established form. Discontent will arise in proportion as the

Manner in  
which a so-  
ciety deposits  
its sovereign-  
ty with its  
rulers.

Tendency of  
absolute mo-  
narchy to  
raise discon-  
tent.



## BOOK I.

## CHAP. V.

government is incompatible with the full and rational liberty of the subject: but civil liberty can acquire no establishment, and make no progress under a government, to which there are no other checks, limitations, or control, than the arbitrary will of an individual. The great dangers of anarchy are to be apprehended immediately after the dissolution of the existing government, before the regular plan of a new one is adopted. The difficulty of framing a good and permanent new government arises out of the horror, which the nation conceives of the old one, which it found requisite to abolish: the probability therefore is, that the newly adopted government will be grounded in the overstrained extreme of the opposite principle from that of the abolished system. Thus did France at first plunge into a lamentable excess of democracy, from the opposite extremes of monarchy and aristocracy. Revolutions and changes in popular governments are not open to the same mischief; for whenever a change is brought about really by the people, they will always retain some of their original rights, and consent to nothing more, than to temperate checks to the pruriency or abuses of pure democracy.

New governments generally give into the extremity of the opposite principles to those upon which the old government was formed.

In discussing these delicate and important subjects, it behoves us to speak with marked and precise correctness. The sovereign and legislative powers are but one: therefore no king, who cannot legislate of himself, has sovereign authority: *quod regi placuit legis habet vigorem* is the distinctive characteristic of an absolute monarch,



monarch, such as was the late sovereign of France. To such governments only are the doctrines of *passive obedience and non-resistance* applicable, in such only are they practical, and from such are they inseparable. Whenever then these doctrines are attempted to be propagated in this country and to be applied to our king, there is more than a supposition, that the government is different from what the constitution intended it to be, or there exists an intention to alter it from what it is. The power of a constitutional king of Great Britain is commensurate with the known line of the law: beyond this boundary, his power extends not. The very terms *obedience* and *resistance* import an authority, that ought to be submitted to, and a power that may be resisted\*. Our king can neither make, change, suspend, dispense with, abrogate, nor counteract the law. The grand and essential difference then between the late government of France and our own consists in this: that the same *passive obedience* and *non-resistance* were required from the subjects to the French king, as we Britons owe to the whole legislative body, viz. to king, lords, and commons. Their acts become laws of the land, and the infringements of them are punishable by known penalties; and in some cases even with death. So in absolute monarchies is the resistance to the arbitrary commands of the sovereign punished in like manner. Seeing then that the legislative power is alone sovereign, and therefore cannot be resisted by individuals, it becomes necessary to examine what acts of the legislature absolutely command our obedience.

BOOK I.  
CHAP. V.

The doctrines of passive obedience and non-resistance not applicable to our government.

The same obedience was due from the French to their king, as is due from Englishmen to their parliament.

\* For the nature and effects of these doctrines, vid. Jur. Ang. from p. 470 to 474.



## C H A P. VI.

## OF THE NATURE OF HUMAN OR TEMPORAL LAWS.

*Of theological Rules for enacting valid Civil Laws. To what Objects the Legislative Powers extend. Laws upon indifferent Subjects do bind. Legislators may sin by enacting Laws, that shall bind the Consciences of others. Laws will bind, though they have no Reference to the general Good of Society. Exemplified in the Coal-duty settled upon the Bastards of King Charles II. Some Holy Fathers Opinions upon the Force of such Laws.*

BOOK I.  
CHAP. VI.

Legislative  
power in each  
community  
essentially so-  
vereign.

**PRESUMING** it to be admitted, that none but the sovereign power can have legislative authority, the conclusion is obvious, that no other *human, civil, or temporal* power within a community can control the sovereign power of that community. For individuals then to pretend to lay down imaginary and restrictive rules, by which alone the legislature must frame its laws, is as vain and arrogant, as it is weak and mischievous. I cannot therefore subscribe to my Reverend Correspondent's position (p. 50.), That "every law is unjust, essentially null, and noways  
"binding the consciences of men, which in its own nature may  
"not be, and which at least in its primary intent is not actually  
"directed to the good of the community." This pretended principle or rule of Theologians is the strongest provocation of  
the



of the subject to disobedience; especially when coupled with his further assertion, (p. 54.), that "of the essential qualities of  
 "a law, a subject may form as clear and decided a judgment  
 "as any other person." The law of nature, which is im-  
 pressed upon the mind of every human being, and the Christian  
 revelation, which by the special gift of God is implanted in the  
 breast of every believing Christian, unquestionably teach us not  
 only what nature and grace require, but assure us moreover that  
 no *human* or *civil* power or authority can licitly and validly or-  
 dain any thing contrary or repugnant either to the one or the  
 other. Upon full and mature deliberation, therefore, I repeat from  
 my *Jura Anglorum* what my Theological Correspondent thinks so  
*highly absurd* (p. 52.) viz. that the "supreme or sovereign tempo-  
 "ral or human power has an unlimited right to prescribe to its  
 "subjects what regulations it pleases concerning all things, that  
 "are not contrary to the law of God and reason, or what is com-  
 "monly called *malum in se*." For it is contradictory to sup-  
 pose a temporal power to be sovereign and supreme, and at the  
 same time to be under any temporal control. As man is de-  
 pendent upon God, so is he subject to his laws both natural  
 and revealed: to whatever subjects therefore the natural and  
 revealed law do not affect, the sovereign power or authority  
 of a state extends, as upon closer inspection will evidently  
 appear.

BOOK I.  
CHAP. VI.

The law of  
nature and  
revelation  
teach us, that  
no human law  
can be made  
against them.

Civil power  
extends to  
whatever the  
law of nature  
and revela-  
tion do not  
affect.

G

It



BOOK I.  
CHAP. VI.

The liberty left to man by the natural and revealed law, is the proper range of human legislation.

It will tend to clear this subject, if I state the opinions and doctrines of my Reverend Correspondent upon the binding obligation of civil laws. "Every atom," says he (p. 53.), "of human liberty would be extinguished by allowing legislative powers an unlimited right to restrain every thing in which the divine law and the natural have left man at his own liberty." I commit myself to my readers upon the direct denial of this proposition; for the range of human legislation is strictly and properly circumscribed by the liberty; which the natural and divine laws have left to man. He persists however in his thesis, and assures us, that "*the fathers and doctors of the church universally maintain this doctrine.* But," adds he, "it is a false and pernicious maxim, that the power of rulers extends to every object, that is not evil in itself, or that the laws are conscientiously binding, when it is clear and certainly known, that they have no reference to the general benefit of the society, over which they are appointed to preside." That other maxim of yours," that every act of the representatives of a community is not necessarily acceptable in the sight of God, nor strictly consonant with the principles of justice and morality, "is still more exorbitant, and so evidently contrary to whatever our Theologians teach concerning the nature and effects of human laws, that it would require entirely a new code of divinity to give credit and repute to such a principle." Before I answer these severe charges, I beg leave to premise this observation: that a general assertion of such being the doctrine



of the fathers and divines may impose upon those readers, who do not mean to examine the truth, but who previously submit their judgment to the asserter. To prove by authority, the case and point must be ascertained, and the words of the fathers and divines be shewn to apply to them.

BOOK I.  
CHAP. VI.

How to apply authorities.

I dwell upon these charges of my Reverend Correspondent merely, because to shew their futility will explain more satisfactorily the nature and obligation of *temporal or human* laws, which is a principal object of this publication. It is an allowed maxim amongst statists, that the sovereign legislative power of each state may enjoin or prohibit whatever external actions the members of that state would otherwise have been at liberty to perform or omit (I speak not of mere animal motions). These laws either of injunction or prohibition will be binding, though specifically they tend neither mediately nor immediately to the good of the state: And I say moreover, that the intention, motives, and views of the particular legislators, who enact such laws affect not their validity, nor do they weaken or extinguish the obligation of the subjects to submit to them. The human legislature cannot bind the conscience; it pretends not to enforce the intellectual approbation of its laws, but only to insure external compliance. The subject is conscientiously obliged to comply with the law, provided it contradict not the law of nature and revelation: because government is essential to society, which the ordinance of God's

Laws upon indifferent matters binding, though they do not specifically tend to the good of the state.

The intention of legislators affects not the validity of a law.



BOOK I.  
CHAP. VI.

providence has rendered necessary for the preservation of mankind.

Unjust laws  
only do not  
bind.

Legislature  
has a right to  
command in  
different mat-  
ters.

\* It becomes requisite against such, as think with my Theological Correspondent, to defend myself by the authority of those, whose theological knowledge is not questioned. Suarez, *De Naturâ Legis in communi*, lib. i. c. ix. will be found directly against them. La Croix, lib. i. *De Legib.* c. i. assigns as the only condition of a law's not binding its being unjust and against reason: *Cum iniqua lex est et contra rationem, non obligat, quia deficit a rectitudine.* But where there is any doubt, which can only arise upon indifferent matters, there we are taught that the law is binding: and why? because the legislature has a right to command indifferent matters, which are alone susceptible of doubt: *Cum dubium est de justitiâ, teneris lege, quia legislator possidet jus præcipiendi.* As an additional motive for obeying the legislature in commanding indifferent matters, he gives another reason, viz. that the governed may not know the reasons of the governor's enacting the law: *potest habere rationes subditis occultas.* He even goes much farther than the line of indifferent matter: *Addit Suarez, etiam obligare, licet contra justitiam legis sint rationes pro-*

\* It certainly is the immediate province of a lawyer to investigate the validity and binding quality of civil laws. But when the authority of divines in this enquiry is urged against me, it becomes requisite to rebutt the charge by similar authority, for the satisfaction of those, who allow to divines any superiority in deciding upon the nature and qualities of civil laws.

*babiles;*



*babiles*; that a law shall bind, against the justice of which very probable reasons are alleged\*.

BOOK I.  
CHAP. VI.

This obligation of submitting to the laws of the State is of singular importance to the preservation of good order in the community; and I hold myself called upon by general motives to notice the want of candour in my Reverend Correspondent, in selecting that as an abstract and universal maxim, and condemning it as false, which was but a part of a sentence closely referring to its antecedent and subsequent parts, and most especially explained by an example, which he has totally omitted. From this mutilated fraction of a sentence, he would make me infer, that the human legislature could enact laws contrary to justice or morality: whereas I undertook to prove, that certain things indifferent in themselves might be enacted by legislators, even with a sinful motive, which would bind the compliance of the subject, who in obeying the law would not at all be compromised in the sinful views or motives of those, who passed it: the paragraph will speak for itself.

Want of candour in my Reverend Correspondent.

† “ Although every act of the representatives of a community be uncontrollable by any superior human power, yet it

\* The doctrine of Suarez but ill accords with that of my Reverend Correspondent, before cited, “ That every law is essentially null, which in its own nature may not be directed to the good of the community.”

† Jur. Ang. p. 105.

“ does



“ does not follow, that every act which they pass is necessarily  
 “ acceptable in the sight of God, or strictly consonant with the  
 “ principles of justice or morality: thus, for example’s sake, sup-  
 “ pose the legislature had, under a very unwarrantable influence  
 “ of a prince, diverted a part of some public fund from the  
 “ laudable intention of the donor or founder, to the unmerited  
 “ reward of a court favourite; the act would be binding upon  
 “ all mankind, nor would individuals be warranted in questioning  
 “ its validity for want of purity or uprightness of intention in the  
 “ persons who passed it. If this principle were once admitted, the  
 “ obedience of the subject would be squared only by his arbitrary  
 “ judgment of the conscientious obligations of his sovereign. The  
 “ consequent confusion in a State would be unlimited. Hence  
 “ appears the difference between the free power and the just  
 “ right of acting: it may often be unjust in a sovereign to enjoin  
 “ what it will be the duty of a subject to perform; yet no  
 “ power whatever on earth can enact what is contrary to the  
 “ law of God and reason, or what is commonly called *malum*  
 “ *in se.*”

That all the fathers and doctors of the church maintain,  
 that no human authority can enjoin *what is not strictly consonant*  
*with the principles of justice or morality* in the observance is  
 strictly true, and no man readier to support it than myself: but  
 it was incumbent upon my Theological Correspondent to  
 prove, that the fathers and doctors of the church held, that the  
 sinful



sinful intention of the legislator in passing a human law upon a matter indifferent in itself, rendered it null, and freed the subjects from the obligations of submitting to it. He had also another point to prove from these fathers and doctors of the church, before he was authorised to attempt to crush me with the ponderous weight of their unanimous opinions: and this was, that “laws are not conscientiously binding, when it is clear and “certainly known, that they have no reference to the general benefit of the society.” He has cited no authority of father or doctor to prove what he assures me they all hold; should he in fact have produced any such authority, I should still hold myself fully authorised to demur to it: because I hold that no human law *ex vi sua* binds the conscience: but that the ordinance of God binds the conscience of man to obey and submit to the laws of the State: now, whether such a law be a valid and real law of the State is rather a discussion for a lawyer than a divine: the example of a subsisting law of our own country will elucidate this point more clearly than a treatise upon the theory and principles of *civil* or *municipal* law. When a provision was made for the payment of one shilling per chaldron upon all coals exported from Newcastle to the port of London, for the illegitimate issue of the unlawful pleasures of king Charles the Second, *it was clear and certainly known, that the law had no reference to the general benefit of the society*, for it was an encouragement given to the vices of the great; and it was increasing the difficulty of procuring a very necessary commodity of life: but

False that all the fathers hold every law null that has not reference to the general benefit of the society.

The coal duty settled upon king Charles's bastard had no reference to the benefit of the society.



BOOK I.  
CHAP. VI.

but will any Theologian pretend to assert, that the law, by which this duty was secured to the illegitimate issue of the king is not equally binding, as any other law of the State: or that a man might conscientiously refuse the payment of this duty, and be conscientiously obliged to pay all other duties imposed by the State?

So far is the intention of the legislators in passing a law from affecting the validity, and consequently the obligation of observing it, that one law may be made with the most sinful intention, that shall bind, whilst another shall be made with a pure and upright intention, that shall have no binding force, and consequently be invalid.

Laws even  
against the  
benefit of the  
society are  
sometimes  
binding.

Supposing for example, that Julian the apostate, in whom the legislative or sovereign power of the Roman empire existed, had *in odium fidei Christianæ* decreed all Christians to enrol their names in their respective divisions throughout the empire, and pay a capitation tax not imposed upon the rest of his subjects: according to my Corresponding Divine's principles, *such a law would not be conscientiously binding, as it is clear and certainly known that it has no reference to the general benefit of the society*: for to impose hardships upon the professors of the religion, which God has instituted, cannot tend to the general benefit of the society. Let us then see how far this opinion is authorised by all the fathers and doctors of the church. St. Augustine thought such a law binding, as appears by a conversation he introduces between a Pagan



Pagan emperor and a Christian subject upon the case\*. "Pay me my tribute; shew me thine obedience. Readily, but not in the temple of idols; there I am forbidden to do it. Who forbids thee? A power greater than thine: hold me excused: you threaten me with prison, he with hell." It behoves me to examine how far the Reverend Divine, who boasts so confidently of the authority of the fathers and doctors, is justified in so doing. "It is," says he, "a false and pernicious maxim, that the power of rulers extends to every object that is not evil in itself." How is this assertion proved by the fathers and doctors of the church? † "It is lawful," says St. Augustine, "for a king in the State, of which he is the sovereign, to command what neither any man before him, nor he himself before did command; and yet the submission to such laws is not hurtful to the State, but the disobedience to them is detrimental to it." ‡ There are things," says St. Bernard, "of a middle nature,

BOOK I.  
CHAP. VI.

Proved from  
St. Augus-  
tine.

Laws upon  
indifferent  
matters bind-  
ing according  
to St. Au-  
gustine and  
St. Bernard.

\* Solve tributum: esto mihi in obsequium. Rectè; sed non in idolio. In idolio prohibet. Quis prohibet? Major potestas. Da veniam: hic carcerem, ille gehennam minatur. *Aug. de Verbis Dom. Serm. 6.*

† Regi licet in civitate cui regnat jubere aliquid, quod neque ante illum quisquam, nec ipse unquam jusserat: et non contra societatem civitatis ejus obtemperatur; immo contra societatem non obtemperatur. *Aug. lib. 3. Confes. c. 8.*

‡ Sunt media, quæ quidem per se nec bona esse noscuntur, nec mala: possunt tamen indifferenter et bene pariter et male vel prohiberi vel juberi: sed male nullatenus in his a subditis obediri. *Bern. Ep. 7.*

H

" which



**BOOK I.** "which of themselves are neither good nor evil, yet they may  
**CHAP. VI.** "indifferently both well and ill either be forbidden or com-  
 "manded, but in neither case are they to be disobeyed by  
 "subjects." It would exceed the intended bounds of this work,  
 to multiply quotations; one fair authority from a holy father or  
 doctor of the church upon any of the doctrines, which I have  
 maintained, will suffice to prove, that the true constitutional doc-  
 trines of English Whigs are not inconsistent with or repugnant  
 to the opinions and principles of the Catholic church.



## C H A P. VII.

OF THE RIGHTS AND DUTIES OF HUMAN LEGISLATORS  
CONCERNING CIVIL ESTABLISHMENTS OF RELIGION.

*Of Resistance to Establishments of erroneous Religions. Civil Establishments affect not the Truth of Religion. Duty of Parliament to provide a Civil Establishment. Effects of Laws giving such Establishments. How Conscience is kept clear in the Compliance with Laws establishing a false Religion. Difference between the Obligation of Laws and the Approbation of the Proposers of them. Plea of Conscience to be eased against Penal Laws for holding Speculative Opinions. Right of Legislature to prevent Discussion even of known Truths, to preserve Peace.*

AS the right of commanding imports the obligation of submitting, it becomes necessary for me to consider not only the obligation of the civil magistrate to make, but also the duty of individuals to submit to the civil establishment of a religion, which individually they may think erroneous. For the meaning of what I have said upon this subject \* may have been mistaken by others, as well as by my Reverend Correspondent; who in a postscript to his letter alluding to my *History of the*

BOOK I.  
CHAP. VII.

\* In the present age of discussion and investigation, it is not a little important to establish the real and conscientious grounds of that submission, which is required by the minority of a community to the acts of the majority, which have passed into laws. It is therefore highly desirable to the present establishment, that all dissenters from it should readily support it.



BOOK I. *British Empire during the last Twenty Months*, charges me with  
 CHAP. VII. what I have never said, either in words or substance, viz. that  
 Of resistance or submission to the civil establishment of a religion we think erroneous.  
 “ Catholics are judged guilty of blasphemy before God, if under  
 “ any pretext of conscience they dared disapprove, resist, or  
 “ oppose any religion sanctioned by the State.” The words in  
 my *Jura Anglorum*, which I presume he alludes to, are from  
 Dr. Rogers : but by quoting them I adopt their meaning, and  
 am fully as responsible for them, as if they were mine own.

Dr. Rogers's opinions misrepresented by my Correspondent.  
 “ A pretence of conscience for opposing the right of the ma-  
 “ gistrate to establish any religion at all cannot be supported  
 “ by the plea of a special mission from God, because a doc-  
 “ trine so absurd and destructive to human society, reason  
 “ cannot admit to be from God,” &c. It is perfectly intelli-  
 gible to the most ordinary understanding, that *to disapprove, resist,*  
*or oppose any religion sanctioned by the State*, is very different from  
*the State's having no right to establish any religion at all* : for if  
 the State have no such right, then does this Divine contradict  
 himself by saying (p. 229), “ that temporal governors, as  
 “ delegates of the Almighty, may at all times make use of the  
 “ authority committed to them by God to uphold the Christian  
 “ revelation.” If the State have no right to establish any re-  
 ligion at all, then cannot *temporal governors make such use of*  
*their authority*; and the Roman Catholic clergyman must con-  
 clude with Dr. Rogers and the author of *Jura Anglorum*, that  
 God could not have given a mission to any one to oppose the  
 right of the civil magistrate to establish the religion, which he



has himself revealed, when it is professed by the majority of the community: but this he could not, as is self-evident, if he *had no right to establish any religion at all.* If any thing I have said, either from Dr. Rogers or myself, upon the right to form or oppose the civil establishment of any religion true or false, go beyond this obvious explanation, I neither support nor defend it. The ground, upon which I maintain the right and duty of framing and supporting a civil establishment of any religion, is the possibility of man's sincere conviction of error. This ground has been urged by Catholic writers, whom my Correspondent will not dare to treat so harshly as he has the person, to whom he addressed his letter \*. "To make a king whom a man judgeth or believeth to be faulty in religion, is a most grievous and damnable sin in him, that doth it, of what side soever the truth be," &c.

BOOK I.  
CHAP. VII

Civil establishments must be made according to the conviction of the majority of the truth of a religion.

The principles of nature equity and right reason ought certainly to form the basis of every human or civil law: these are in their nature uniform, steady, just, infallible, universal, everlasting, and all-sufficient: and they may not improperly be termed the instincts or impulses of a benign providence engraven in the hearts of all rational beings. Now although it be the conscientious duty of legislators to form and model the laws they make upon these principles; yet as every civil law is but a human institution, it is essentially liable to, and actually af-

\* Doleman on the Succession, P. i. pa. 172.

fectcd



BOOK I.  
CHAP. VII.

The obligation of obeying the laws depends solely upon their validity, not upon their excellence.

fect by the frailty and fallibility of its makers. The most consummate wisdom and experience, and the most undefiled uprightness and integrity will not alter this essential attribute of every *temporal* law. In speaking of the conscientious obligation of submitting to *temporal* or *civil* laws, it is not to be enforced by the greater or less conformity of the laws with those principles, upon which the legislator was bounden to frame them. It is morally impossible, that any two civil laws should in an exactly equal degree approach unto or deviate from these principles: and yet the obligation of observing and obeying the laws admits not of the *plus* or the *minus* according to such approximation or deviation. The sole quality, that renders a law obligatory, is its validity: and this, as I have before observed, depends upon the nature of the thing enacted. If it be in its nature indifferent and capable of being observed by all the members of the State, all subjects are bounden to obey the law, whatever may have been the motives or intentions of the legislators in passing it: if it be contrary to or inconsistent with the law of nature and the word of God, no subject can lawfully obey it; because such a law cannot be valid. Within the scope of lawful or indifferent actions *civil* or *temporal* legislators are bounden to frame such laws, as in their judgment and discretion they shall think tend to advance the unity peace and welfare of the community, which is the whole extent of their trust and mission. But the observers of the law are in no manner committed in the conscientious discharge of duty by the legislators. However  
sinful



sinful unjust or mischievous their views motives and reasons BOOK I.  
CHAP. VII.  
may have been for passing the law, the subjects are conscientiously bounden to obey it, provided it contradict not the law of nature, and the revealed word of God.

It is the duty of the ministers of the Gospel, according to their prudence and discretion, by word and example, in patience prayer and suffering to disapprove oppose and resist idolatry or other error. But this is widely different from the non-observance or resistance to the laws of the State, which give the civil sanction to a false religion: for if the laws giving such sanction be civilly valid, they operate like other civil laws in preserving the peace of the community: and consequently the observance of them is enjoined by the general ordinance of God, who for the preservation of society enjoins submission to the municipal laws of each State. The civil establishment of any religion neither can nor pretends to affect the truth of the religion established: thus the same sovereign temporal power gives *civil* sanction to different religions in different parts of the kingdom of Great Britain; to episcopalian protestantism in England; to presbyterianism in Scotland; which would be inconsistent, if the same legislature gave the civil sanction on account of the truth of the respective religions so established; for the same magistrate cannot at one and the same time believe two opposite religions to be true. This same legislature gives a civil sanction to the Roman Catholic religion in Canada, which still imports no

Of the obligation of submitting to laws giving civil sanction to a religion.

Civil establishment is not given on account of the truth of the religion.

con-



BOOK I.  
CHAP. VII. conviction in their minds of its truth. The parliament of Great Britain, in whom the legislative or sovereign power of this realm resides, distinguishing very properly between the *temporal* authority, which is delegated to them by the nation, and the *spiritual* power, which is immediately established by God, and over which they have no control, confine themselves to their own province, and exercise the powers they are invested with in the best manner they can, to preserve the peace union and strength of each part of the kingdom subject to their legislation. They have in them no superintendence, no care of consciences, no cure of souls, no divine mission to preach or administer the word of God. As Christians they know and admit these duties and powers to belong to the ministers of the Gospel, who in its proper place I shall shew receive neither their orders powers jurisdiction nor obligations mediately or immediately from the community.

The duties  
of the civil  
legislature  
extend not  
to the cure  
of souls.

In saying that the civil magistrate has no cure of souls, I pretend not to deny, that his power reaches to the suppression of moral evil and to the encouragement of moral good: so St. Paul writing to the Romans about their civil magistrate, says, (13 ad Rom.) that he is "to be a terror to evil-doers, and a "praise to them that do well." When he fully asserts the power of the magistrate, it is the power of the Heathen magistrate, such as was vested in him previous to and independent of Christianity. Whatever therefore, according to St. Paul, he was obliged



obliged to do, was what the light and law of nature directly guided him to do. Such then as St. Paul represented the civil magistrate to the Romans, such did he remain after his becoming Christian; for Christianity gave him no new power. The Heathen civil magistrate has fully as large powers about religion, as if he were Christian: and is bounden to take equal care of the morals of his subjects, according to the light of nature. The powers of a parent over his child, of a master over his servant, and of a prince over his subjects, were all instituted by God, and engraven in the hearts of men by the instinct or light of nature before God revealed to us the mysteries of the Christian religion. Although the performance of these duties be greatly perfected in the exercise by the light of the gospel, yet the duties are still the same they ever were, as is also the conscientious obligation of submitting to them: therefore the Apostle saith (v. 2.) in speaking of the Heathen magistracy of Rome, "Whosoever therefore resisteth the power, resisteth the ordinance of God." The inference is: the power, which the magistrate has, is ordained by God; and because it is ordained by God, therefore does it bind the conscience of man. It will be readily allowed, that the conscientious obligation to obey must be commensurate with the power of the magistrate to command. As this power of the civil magistrate was instituted by the general ordinance of God, and the obligation of submitting to it was implanted in the breasts or consciences of men through the instinct or impulse of the light of nature, it will follow, that

BOOK I.  
CHAP. VII.

The duties  
of a Heathen  
and a Christian  
magistrate the  
same.

I

there



BOOK I.

CHAP. VII.

The light of  
nature regu-  
lates the du-  
ties of the ci-  
vil magistrate.

there can be no alteration in the nature of it from its first institution: the duties of the magistrate cannot have altered, nor his jurisdiction have been enlarged or narrowed. Whatever therefore is dependent upon the judgment, discretion, or conviction of particular men cannot be within the control of this divine ordinance; because the duties of the magistrate in such case would vary indefinitely; he would then essentially sin, if he tolerated or suffered any thing to be done by his subjects, which he did not think punctually right and proper: such a discretionary power and duty in the magistrate would prevent the very possibility of *any liberty of conscience*; for so the private convictions of the civil magistrate would control and compel those of all his subjects, who avowedly are under a conscientious obligation imposed upon them by God of obeying the civil magistrate in every thing, in which he has a right, and *a fortiori* in which he is under an obligation to command. As all men therefore have received equally the same general instinct and impulse from the light and law of nature, and as these are the means or instruments, through which God has implanted in the hearts of men the general ordinance, which St. Paul forbids us to resist, it is undeniable, that the power and duties of the civil magistrate are such only, as the light and law of nature will instruct and enable him to perform. Thus are divine revelation, dogmatical opinions, and the internal dictates of conscience formally excluded from the province, power and control of the *civil magistrate*.

All



All that our parliament, as a civil power, can bestow, must necessarily be of a *civil* nature: thus\* are the ministers of the established religion supported, maintained and dignified by the State: they form a separate body from the laity, are bounden by ordinances, regulations and canons, to which the laity are not subject: in many instances they are made corporations, and are enabled to sue and be sued in their corporate capacity, and are intitled to many civil immunities, rights, liberties and privileges in the State. As all these things are of a civil or temporal nature, and of themselves indifferent as to their absolute existence, they may licitly be enjoined by the civil power: when so enjoined, they will form real and valid laws; and such laws each member of each community is by the general disposition of God's superintending providence conscientiously obliged to submit to. Fenelon said, "Kings" (*i. e.* the civil magistrate) "should not take upon themselves to direct in matters of religion." Our Parliament take not upon themselves to direct in matters of religion; they leave the adoption of it to each individual; they know, that God has reserved to himself the immediate and exclusive intercourse with the soul of every rational creature: they admit, that he alone judges of the internal conscientious duties, which he has imposed upon his creatures, and therefore that for them to erect a tribunal for determining how far individuals have complied with, or resisted the light of heaven, would be a palpable excess of their mission, and a daring impious encroachment upon

The grants of the civil power are necessarily of a civil nature.

Parliament cannot interfere with the internal duties of conscience.

\* Jur. Ang. 88.



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Are obliged  
by the nature  
of their trust  
to give civil  
sanction to  
the religion  
of the major-  
ity.

the prerogatives of the Divinity. When it has evidently appeared to the legislature or sovereign power, that a majority of any considerable or distinct part of the community under their jurisdiction concurs in a particular mode or form of worship, they are obliged by the nature of their delegation and trust, to give to the religion of such majority a civil sanction or establishment: they have no power to judge or direct the consciences of individuals, although they have it in charge to check such immorality and to promote such morality, as the law and light of nature direct and require; and in doing this they provide for and secure the peace order and welfare of each part of the community.

The laws  
which give  
civil sanction  
to different  
religions in  
England,  
Scotland, and  
Canada, are  
all equally  
binding.

No human legislature can validly enact laws, or enjoin acts prohibited by God. I therefore speak not of such laws, as attempt to enjoin and enforce the conformity with a religion, which the individual may in his conscience believe to be erroneous; or which enact penalties and punishments for exercising a religion, which in his conscience he may believe to be true. As then the parliament of Great Britain has given civil sanction to the Episcopalian Protestant religion in England, to the Presbyterian religion in Scotland, and to the Roman Catholic religion in Canada, I say, the laws by which this is effected are all of equal force and validity, and are therefore equally binding on the consciences of all persons subject to them; not on account of the truth of the religion, to which they give a civil establishment, not on account of the intention and views of the legislature in passing them,  
still



still less on account of the effect, they may produce in forwarding or checking any particular religion, but because they are valid laws of the State, and to such the general ordinance of God enjoins submission. So a conscientious and sincere member of the church of England living in Scotland is bounden to follow and exercise his own religion, which he thinks true, and at the same time not to resist and oppose the laws, by which the civil establishment is given to the Presbyterian religion throughout that part of the kingdom. Under the like relative obligation would a conscientious and sincere Presbyterian be with respect to the Roman Catholic religion at Quebec: and therefore I, as a Roman Catholic in England, though I cannot conscientiously adopt the Protestant religion, hold myself bounden not to oppose and resist the laws, by which it receives the *civil* sanction of the State.

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CHAP. VII.

Duties of  
such subjects  
as dissent  
from the re-  
ligion esta-  
blished.

As the majority of Englishmen adopt the Protestant religion, endless confusion disorder and discontent would happen in the nation, if they had not Protestant churches to frequent, and Protestant ministers to preach and administer to them the sacraments and rites of their own religion. It becomes then the duty of the legislators to prevent confusion disorder and discontent; and therefore is it, that our Parliament under the existing circumstances is bounden to give a civil establishment to the Protestant religion in England: and consequently may it pass *valid* laws for that purpose. Yet, although each individual

The duty of  
Parliament to  
give a civil  
establishment  
to the Prote-  
stant religion  
in England.

subject



BOOK I. subject residing in this State be conscientiously bounden to obey  
CHAP. VII. such laws, his conscience is in no manner committed in the truth or falsity of the religion, which the laws are the means of supporting in a *civil* way.

Three sorts of actions under the control of the human legislature.

In order to explain this the more fully, we must view in three distinct lights those actions of men, which a human legislature may control: the *first* is the mere physical action abstracted from any mental application to render it moral or immoral; the *second* is the physical action so influenced by the moral intention, that its essential nature consists in this inseparable connection of the intention with the action: as for example, the administering poison to another, sacrificing to and adoring an idol; or by omission in neglecting to perform any explicitly enjoined duty. The *third* is the performance of certain actions, which though indifferent in themselves, are enjoined with a vicious or sinful intention in the legislature, and may as well as any other physical action be converted by the *malus animus* of the agent into an immoral action: but which at the same time may, and indeed ought to be performed by the subject externally, without his mental approbation or application of it to the intention of him that enjoined it. Let us consider how our blessed Redeemer acted for our example in such instances when upon earth. Judea was in his time subject to the power of the Roman Emperor: an idolatrous worship was established throughout the empire. The Emperor himself was looked upon as the *pontifex*

Example of our blessed Lord when upon earth.



*pontifex maximus* or high priest: and the actual application of a part of the taxes was made to support an idolatrous and false religion. All positive laws of the empire, that required or enjoined the second sort of actions, such as to offer sacrifice to idols, or renounce Christianity, were null and void: but such actions of the third class, which enjoined the payment of money, a part of which was applicable to the support of their idolatrous priests and temples, were obeyed and complied with by our Lord, who paid the tribute for himself and St. Peter without enquiring into the particular appropriation of it. This, like every other action of our Divine Master, was for our instruction and example: and it emphatically teaches every Christian the same obligation of paying taxes tythes or such like impositions when imposed by the *civil* power, whether they be applied wholly to mere civil purposes, or partly to the support and maintenance of the ministers of the religion, which receives the civil sanction of the State; and it is immaterial whether such religion be true or false, Christian or Heathenish. So, as I shall say more fully hereafter, tythes are not paid because the parson is entitled to them by the revealed law of Christianity, but because they are secured to him by the *civil* law of the State.

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CHAP. VII.

Part of the taxes paid to the Roman Emperor were applied to the support of an idolatrous worship.

Notwithstanding such application, our Divine Master paid the tax for himself and Peter.

Before I quit the present subject, I am under the necessity of noticing an objection made by others, as well as by my Reverend Correspondent against me, for having in my History of the last Twenty Months, so strongly disapproved of the acts of his Majesty's



BOOK I. Majesty's ministers, after having in my *Jura Anglorum* so  
CHAP. VII. forcibly insisted upon the obligations of submitting to the acts

Difference  
between op-  
posing the  
laws, and dis-  
approving of  
the policy of  
proposing  
them.

Danger of  
confounding  
the legislative  
and executive  
powers.

of the majority. In my *Jura Anglorum* I spoke of the binding obligation of the laws, when once enacted and thus become the acts of the majority. In my History I spoke of the policy or prudence of the ministers who proposed them. The execution of a valid subsisting law cannot on any account be resisted: but to infer from thence, as my Correspondent does, that "in no instance the conduct and measures of ministers may be disapproved of, resisted, or opposed," would be to revive the spirit which inspired King James the First to tell his Parliament in 1609, "That it was sedition for them to dispute what a King may do in the height of his prerogative." It is dangerous and unconstitutional to confound the legislative and executive powers, and not to discriminate the actions of ministers from the acts of the legislators. If to point out the impolicy, inconveniency, or hardship of a law, be to resist and oppose the sovereign power, to which we owe unqualified obedience, it is singular, that this zealous Theologian, who has received such scandal from my doctrines, should expressly "admire my address and zeal in exposing the illiberality of those, who make a merit of holding a rod of religious restraint over the backs of thousands of Irish Roman Catholic soldiers and sailors, to whom the State is at this moment indebted for its preservation." p. 229. I acknowledge the obligation of submitting to the laws, by which Roman Catholics are disabled



and made punishable for serving their country either by land or sea; although "it be clear and certainly known, that they have  
 "no reference to the general good of the society:" for it is competent for the civil power to exclude any particular set of persons from the military or naval service. I spoke against the policy of the law, not that it should be resisted or opposed, but to enforce its observance, as the surest means of procuring its repeal. For my serious opinion is, that whilst these laws subsist, no Roman Catholic can enter the service but *in fraudem aut contemptum legis*, neither of which is reconcileable with conscience.

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 CHAP. VII.

Impolicy of  
 the Test law.

There appear the like contradiction and inconsistency in my Reverend Correspondent's condemnation of Mr. Fox's motion for repealing the 9th and 10th of Gul. III\*. For with what face can a Roman Catholic complain of being punished for believing the mystery of transubstantiation, as a speculative article of belief unconnected with government, and at the same time wish to see others punished for holding doctrines concerning the mystery of the Trinity equally speculative and unconnected with government? A member of the Church of England must, I presume, equally disapprove of the opinions of the

Unreasonable  
 in Roman Catholics wish-

\* This Act imposes the severest disabilities upon every one, that denies any one of the persons in the Holy Trinity to be God, or that shall say, that there are more Gods than one, or that shall deny the Christian religion to be true, or the Old and New Testament to be of Divine authority.

K

Roman



BOOK I. Roman Catholic on the Eucharist, and of the Unitarian on the  
 CHAP. VII. Trinity. The Roman Catholic, who holds one of these doc-  
 ing to be eas- trines to be true and the other false, stands as to the legislature  
 ed of penal of the country, exactly in the same predicament and with the  
 laws for hold- same plea as the Unitarian, who does the same : for though the  
 ing specula- majority of the legislature individually believe them to be both  
 tive opinions, wrong, yet they have no competent power or authority to  
 and rejoicing judge the point. If the legislative power have removed some  
 that others of the disabilities from the Roman Catholic for believing the  
 suffer the like real presence in the Eucharist, it cannot be because the legis-  
 hardship. lators believe the doctrine to be true, otherwise they would  
 adopt it : but because they think it unreasonable to punish men  
 for speculative opinions, which they hold themselves conscien-  
 tiously obliged to believe. Upon this ground, which is the  
 plea of conscience, the Roman Catholic and the Unitarian have  
 equal pretensions to the favour of the legislature, being both  
 of them, as to the truth or falsity of their respective doctrines,  
 before parliament completely *coram non judice*.

The doctrine  
 of Transub-  
 stantiation  
 and of the  
 Trinity  
 equally specu-  
 lative and un-  
 connected  
 with govern-  
 ment.

The human  
 legislature  
 cannot im-  
 pose silence  
 more upon  
 one point of  
 Christian Re-  
 velation, than  
 upon another.

But it will be said, that neither in one case nor in the other  
 is the Roman Catholic or the Unitarian fettered in his thought  
 or mental or intellectual operation, but prohibited only from  
 writing and speaking upon the subject: now if this prohibi-  
 tion be grounded upon the truth or falsity of the revelation, a  
 Roman Catholic must deny the right of the legislature to im-  
 pose silence upon one point of divine revelation more than  
 upon



upon another: all points revealed resting upon the same authority. The legislature in fact is absolutely incompetent to judge or determine upon any such question. The only object, which it is competent for the civil or temporal legislative or sovereign power to pursue, is to preserve the civil peace and harmony of that society, which has given them their sovereign or legislative authority. Now allowing that every power must be adequate to produce its own effect, it follows, that a civil legislature may be often under a strict obligation of prohibiting the public agitation of a point, which individually they may believe to be infallibly true, merely to prevent the discord confusion and mischief, into which the discussion of the question may throw the community. The sovereign *civil* power has the care and trust of preserving the peace unanimity and concord of the society \*, not that of instilling into them the religion revealed by God, nor of answering for their consciences and souls. This is a special mission given by God in a different manner, to be carried on upon different principles, and to be exercised by different means from those of the temporal power. This would naturally bring me to the immediate consideration of *spiritual* authority. Since however my Reverend Correspondent has chosen to say so much concerning the revolution of 1688, and has placed my praises of that revolution as the

For the peace  
of society  
they may pre-  
vent the pub-  
lic discussion  
of any point,  
even of a  
known truth.

\* *This is the end why all government was ordained to benefit the public.* Doleman on the Succession, Part ii. p. 180.



BOOK I. "first of the three particular points in which I have trespassed  
 CHAP.VII. "more remarkably, and appear to be inconsistent with the charac-  
 "ter of a Catholic," I feel myself called upon, before I enter upon  
 the consideration of the *spiritual* power, to say something more  
 than I have in my *Jura Anglorum* upon the *revolution* of 1688,  
 either in confirmation or explanation of what I said upon the  
 subject in that work. The delicacy of handling revolutionary  
 matter in the present spirit of the public mind imports to me  
 the strongest necessity of rectifying the dangerous errors, that  
 are now propagated and encouraged from *high authority* con-  
 cerning the fundamental principles and the existing basis of  
 our constitution.

The delicacy  
 imports the  
 necessity of  
 handling the  
 subject of our  
 revolution of  
 1688.



## C H A P. VIII.

## OF THE REVOLUTION OF 1688.

*The Principles upon which the Revolution was framed not inimical to the Roman Catholic Religion. No new penal Laws then made against Roman Catholics. The Delegation to the Civil Magistrate by the Community to preserve their Civil Welfare. Their Duty to prevent a Dissolution of Government. Several Acts of King James which brought forward the Revolution. James not dethroned. Passive Obedience and Non-resistance. Duty of the Society to provide a Civil Establishment for the prevailing Religion.*

UNDER a general impression of the horrors created by the first revolutionary measures of the French republicans, I am fully sensible of the difficulty of speaking freely of any revolution without offending some of my readers. The political alarm of the present hour, like a species of insanity, robs the mind of its ordinary powers of reasoning, whenever it touches the subject of its infirmity. To the effects of such impressions are to be attributed the most dangerous of all political errors in this kingdom, those which loosen the democratical basis of our constitution, by overstraining the power and influence of the crown. To libel any one of the three constituent parts of the constitu-

BOOK I.

C H A P.  
VIII.

Difficulty of speaking of any revolution in the present state of the public mind.



BOOK I.  
CHAP.  
VIII.

To libel one  
part of the  
constitution  
is to libel the  
whole.

tion is certainly to libel the constitution: and no man, who admits the mixed form of our government can deny, that the popular or democratical part is one of the three component essential parts of the British constitution. I blame not therefore rigor and severity in punishing (*according to law*) the libeller of the *regal* power of the constitution: but neither can I commend laxity and remissness in prosecuting the libeller of the *popular* power of that same constitution: still less can I panegyryze the modern system of discountenancing, vilifying, if not criminating the asserters of the rights and liberties of the people. This I have premised in order to open a free and unbiaſſed diſcuſſion of the principles and effects of our revolution of 1688. Dr. Price \* ſaid truly of it: “ Were it not true, that liberty of  
“ conſcience is a ſacred right, that power abuſed juſtifies reſiſt-  
“ ance, and that civil authority is a delegation from the people,  
“ the revolution would have been not an aſſertion, but an inva-  
“ ſion of rights; not a revolution, but a rebellion.”

The princi-  
ples of the re-  
volution in  
1688 neither  
new nor in-  
imical to the  
Roman Ca-  
tholic reli-  
gion.

I muſt ſet out with an abſolute and unqualified denial of my Reverend Correſpondent’s ſuppoſition that any *new* principles were ſet up or eſtabliſhed at our revolution in 1688: confe- quently *none inimical to the Catholic religion*, as he com- plains of (p. 111). That revolution was brought about by the principles of the Engliſh conſtitution, which was framed and

\* As quoted in Jur. Ang. 165. Vid. the whole eighth chapter, *upon the revolu- tion and its principles and effects.*



established by our catholic ancestors. The principles, therefore, upon which they founded it could *not be inimical to their own religion*, if they could both stand together. The English constitution had subsisted upon these very principles nearly for the space of 900 years, during which the Roman Catholic was the established religion of the country. It was not without reason then that I complained \* “ of others not distinguishing between the facts, “ which occasioned, and the principles, which justified the revolution : that the principles were prior to and independent “ of the revolution, that the facts were never likely again to “ recur so as to form a precedent for another revolution.” But what then is to be inferred from my saying “ that the immediate cause of the revolution was the dislike, which the “ nation had to the religion of their sovereign ?” This was a fact that caused, not a principle, that justified the revolution. Yet I have unfortunately roused the indignation of my Reverend Correspondent, by giving praise to that effect, which he says I allow to have been produced by the dislike or hatred to my own religion. I might indeed have touched his zeal, had I applauded or justified that dislike or hatred on the score of the faults or imperfections of that religion. For in this I go cordially with Father Parsons. “ To make a king whom a man †

\* Jur. Ang. 170.

† This is to be understood of the supreme or sovereign power generally, which certainly ought to be vested in the hands of those, whom the majority of the community believes to think with themselves, consequently who will promote and support that religion, of the rectitude of which they are convinced.

“ judgeth



## BOOK I.

CHAP.  
VIII.

No laws  
made at the  
revolution  
concerning  
the Roman  
Catholic reli-  
gion except  
in the tenure  
of the crown.

The hardship  
of excluding  
the hereditary  
line from the  
crown on ac-  
count of their  
religion.

“ judgeth or believeth to be faulty in religion, is a most  
“ grievous and damnable sin in him, that doth it, of what side  
“ soever the truth be.” Nothing could justify my Correspon-

dent's false assertion, that the establishment of the Protestant reli-  
gion was made at the revolution. It had existed above 100

years before that time through six different reigns. No law was

made at the revolution *concerning the Roman Catholic religion*

but that, which rendered the profession of it by the sovereign

an absolute incapacity of holding the crown. The civil esta-

blishment of the Protestant religion and the intolerance of

the Roman Catholic religion were left precisely as they were

before the revolution. Whatever reason there might be for

complaining of the many cruel sanguinary and oppressive

laws against the professors of the Roman Catholic religion, the

complaint lay not against those, who brought about the revo-

lution, who added not to their severity by any additional penal

law whatsoever. Their annexing to the tenure of the crown

the conditions of the sovereign's not professing the Roman Ca-

tholic religion and not marrying a Catholic, certainly was a

very harsh measure upon the hereditary family, and I have

said, that it was \* the “ greatest stretch of human power, to

“ make the king's choice of his own religion (a right which

“ every man possesses independently of the community) the im-

“ mediate cause of his deprivation of all those benefits and ad-

“ vantages, which the community had settled upon him,” &c.

\* Jur. Ang. 198. N. B. I do not say independently of God, as my Reverend  
Correspondent falsely charges me with.

But



But as the duty and obligation of the sovereign or legislative power arises out of the nature of the delegation of that very power to them by the community, it follows that this delegation must be presumed to be for the preservation of the peace, union and welfare of the community: and this is the end of government, which God's general providence has rendered necessary for society. \* "This is the end why all government was ordained, to benefit the public."

BOOK I.  
CHAP.  
VIII.

The legislative trust for the welfare of the community.

As the civil or temporal power is independent of the spiritual power, and is different from it in its creation, in its objects and its means, it will be readily admitted that the propagation of religion, the responsibility of consciences, and cure of souls, were not committed to the *temporal, civil, or human* rulers by God. Their duty was to look to the safety and welfare of the State; this, at the time of our revolution, obliged them to find the fact, before they legislated upon it. The preamble to the Act of Settlement is, properly speaking, the verdict of the nation, "Whereas it hath been found by experience, that it is inconsistent with the safety and welfare of this Protestant kingdom to be governed by a Popish Prince, or by any King or Queen marrying a Papist," &c. This was a fact, upon the truth or falsity of which, not the right or free choice, but the duty and moral obligation of the legislature's acting depended.

Nature of the delegation of the legislative power by the community.

The duty of the legislature to act according to their conviction.

\* Doleman, *ut antea*.



## BOOK I.

CHAP.  
VIII.

The legislature of that day was, I believe, unanimous in assenting to this verdict of the nation; that is, they really believed, that the safety and welfare of the nation had been brought into imminent danger by their late sovereign King James II. and all the acts, by which he had attempted to infringe, weaken, or alter the laws and constitution, they referred to his believing and professing the Roman Catholic religion, presuming him bounden to act, as he did, by the conscientious duties of that religion. This presumption was false, but not groundless. James without abandoning or neglecting his religion might (and in my humble conception ought to) have acted in a very different manner. This the Protestant part of the nation could at that time hardly believe: and “all that is not according to a man’s own belief is *sin* to him, for that it is against his own conscience, judgment and belief, believing one thing and doing another \*.” Here the whole question of duty was to be resolved by the *sincerity* of the belief of those, who found this verdict, or who framed the preamble to the Act of Settlement.

The sovereign or legislative power have received no commission as to the religion of any man.

As to the religious belief or practice of their sovereign, or of any member of the community, the legislative power had received no delegation nor commission from their constituents for this obvious reason, because this is a conscientious concern between God and the soul of each individual, over which the

\* Doleman, *ut antea*.

community



community has no control: nor can one individual subject himself in this responsibility to another. But the representatives or deputies of the nation have received *immediately* from the community, and *mediately* from God, an absolute delegation, and are therefore conscientiously bounden to superintend and preserve the safety and welfare of the community: consequently to provide against that, which according to their *sincere* belief “by “experience they had found or judged to be inconsistent with “the safety and welfare of the community.” The means of doing this must necessarily be left to their discretion; they can exercise no other than a human judgment upon the propriety and exigency of the means: now no human judgment of a corporate or associated body composed of many individuals can be otherwise framed, than by the collective sense of the whole, or of the majority of them. In this case then it did appear, that the Sovereign’s profession of the Roman Catholic religion, against which the nation was then (I enter not into their reasons) much prejudiced, would be productive of disunion, revolt and war: these would be subversive of that government, which it was their primary duty to preserve: for this were they delegated by the people: and for this are all people empowered by the general ordinance of God’s providence over the human species to delegate such power to individuals: in the exercise of this power, they are to act by the light and law of nature, which are prior to and independent of the Christian Revelation.

BOOK I.  
C H A P.  
VIII.

Collective bodies can only form a human judgment, and by the sincerity of that are they bounden to act.

Preservation of the community is the primary end of government.



## BOOK I.

CHAP.  
VIII.

General ideas  
of govern-  
ment and  
authority.

From the providential arrangements of God arises the difference of the human from any other species of the animal creation. They alone are formed for society, and consequently for government: authority and obedience are necessary for government, and authority and obedience formally import superiority in the governors and inferiority in the governed. In this general sense the establishment of authority in the human species comes certainly *immediately* from God; and so it is said, *Non est potestas nisi a Deo: There is no power but from God.* But this establishment of human power by God does not consist in the investiture of it immediately in any particular individuals, but in the creation of its general necessity for society. The consideration therefore of that, which God has made necessary for every community, which is government, must supersede that, which is in its nature accidental and changeable, which is the form of government and the persons, in whom the supreme authority shall rest; for these are left to the free choice of each community: *Singulæ species regiminis sunt de jure gentium.*

The English nation in the year 1689, when this Act of Settlement was passed, were under the general necessity of having some government; but they also enjoyed the general liberty given by God to all mankind of framing their own form of government, and deputing and delegating the *sovereign power* (to which God required their submission) to whomsoever they should think proper: in fact they then chose to continue the old form of govern-



government and the constitution, which had been framed by their ancestors: they were as free to alter it entirely, as they were to do it in part: but the parts, which they did alter, evidently were intended for the better preservation of the whole; they were the result of observation and experience, and therefore the proper grounds for forming a discretionary judgment of the means of executing the trusts, that were vested in them, which were to *superintend and preserve the safety and welfare of the community*. The alterations introduced at the revolution were not properly alterations in the constitution, but innovations in some of the laws calculated to preserve the constitution upon a firmer basis; for the constitution is the more firmly preserved, by how much the dissolution of government is rendered more difficult. They had just experienced an actual dissolution of government, and had then to devise the best means in their power and judgment to prevent a repetition of this greatest of all political evils.

BOOK I.  
CHAP.  
VIII.

The right of our ancestors at the revolution to change the whole as well as any part of the constitution or government.

Duty of the civil magistrate to take precautions against a dissolution of government.

The most zealous supporter or advocate for king James, Jacobite or Catholic, can have no grounds for denying or even supposing, that our ancestors were not sincerely convinced, that the zeal of king James for propagating and advancing his own religion brought him to the fact of his abdication. In order therefore to prevent similar attempts in future, which in human probability would be attended with similar consequences, they altered the descent of the crown, and limited it to other persons, that



## BOOK I.

CHAP.  
VIII.

The changes  
at the revo-  
lution were  
in the descent  
and tenure of  
the crown,  
and the abo-  
lition of the  
dispensing  
power.

that were not Roman Catholics; and they annexed to the new limitations the express condition *of being Protestant*. They moreover found it expedient to deny to any king in future the power of dispensing with the laws in favour of individuals\*. Nothing more was done at the revolution, or in consequence of the revolution, concerning the Roman Catholic religion. I have said much to little purpose, if it do not appear clear to my reader, that the principles of the revolution *which I have approved of* are those identical principles, upon which our Roman Catholic ancestors framed and supported for above nine hundred years that constitution, which every true Briton will sincerely pray, may in its genuine purity have an equal duration with Society itself.

Acts of king  
James that  
brought for-  
ward the dis-  
solution of  
government.

In the eighth chapter of my *Jura Anglorum* I noticed such acts of James the Second, as I thought would convince my readers of his having abandoned and dissolved his government: but the candor of my Reverend Correspondent has induced him to give in minuter detail several other actions of this unfortunate monarch, which tended to hasten and ensure that dissolution. I shall briefly recapitulate them for the satisfaction of my unbiassed reader, having first premised the fundamental principle of our

\* King James's attempt to counteract an act of parliament by his royal proclamation, or in other words to defeat the general effect of a statute, was widely different from the dispensing power in some particular cases, which was heretofore a prerogative in the Crown.

confli-



constitution, that all the power, which the king possesses, he receives from the community; and that every attempt to acquire a power, which they have not given him, is an attempt at usurpation and ought to be resisted. He ushers in his hero declaring to his parliament (p. 117), "That he shall make it his endeavour to preserve this government both in Church and State, as it is now by law established."

Little as he afterwards verified his promise, this king made only a declaration of his known duty; he could not alter the law, and it was matter of notorious conviction to the whole nation, that he, like every other English monarch, ascended the throne for the purpose of preserving, and executing the law. Such was his trust, such his duty, and such his obligation, and a reflex and determined abandonment of that trust was in its nature a forfeiture or abdication of it; which of course then revolved or reverted to the power, from whence it had originally emanated.

A reflex abandonment of the trust is a forfeiture of it.

He proceeds to tell us (p. 118), "That immediately after his accession to the throne various circumstances intervened to disturb the councils, and perhaps alter in part the primitive intentions of the sovereign." No circumstances but the collective and formal acts of the community could release the sovereign from the duties and obligations of his regal office: he had no right to alter his intention to preserve the laws, for such intention.

James could have no reasons that could justify his altering his intention to preserve the law.



BOOK I.  
CHAP.  
VIII.

Illegal acts  
done by king  
James.

Declaration  
of Indulgence  
or Liberty of  
Conscience.

tention was not optional, but obligatory upon his conscience; it was a debt of justice due to his people, who constituted him king; and the more perilous were the attempts against his throne, the more steadily should he have applied to the basis, upon which it stood for support. He then assures us (p. 120) that the measures pursued against those, who had rebelled with the Duke of Monmouth were "rigorous in the extreme, and for the great part illegal." He also details a "list of crimes alleged against James," which he admits "to have been contrary to law (p. 123): His forming the Catholic Council, of which Father Petre, a Jesuit, was made a member: his attempt to intrude some Catholics into church benefices, chiefly the deanry of Christ Church, and Magdalen College, Oxford: his laying an injunction upon the established clergy not to preach on controverted points; and forming anew, of the same clergy and of some Protestant temporal Lords, the High Court of Ecclesiastical Commission, abolished in the reign of Charles the First, and now revived for the particular purposes of the king: his sending to and receiving an ambassador from Rome: finally the famous Declaration of Indulgence," &c. He then informs us (p. 124) "That on the 17th of April 1688, James published the known Act of Indulgence or Declaration of Liberty of Conscience in favour of all Christian sects, whereby Catholics as well as others, if the act had been adopted, would have become admissible into the army and other places of trust, notwithstanding their non-compliance with the Test Act, which



“excluded them from such posts.” Thus he pretended by royal proclamation to repeal an act of parliament: a power incompatible with our constitution, and far exceeding the ancient prerogative of the crown in dispensing in particular cases with the requisitions or penalties of the law. He further informs us (p. 125) “that James sent this declaration or proclamation to the bishops with a mandatory letter to publish it in all their churches; that six of them petitioned against it, for which they were summoned before the council, reprimanded and committed to the Tower, tried for sedition, and honourably acquitted, because, notwithstanding the illegal mandate of the King, it was their duty to attend to the interest of that religion, which was committed to their charge.”

BOOK I.  
CHAP.  
VIII.

Trial and acquittal of the six bishops.

After this he gives a full and curious account (chiefly from Dalrymple's Memoirs) of the weakness and folly of James's measures, and of the treacherous abandonment of his cause by the Pope: and concludes, that upon the whole he thinks (p. 138) “in taking an impartial view of this affair, with truth it may be asserted, that James could no longer remain king of England.”

In this I perfectly agree with him, whilst he chose to rule by a power not given to him by the people of England: but it is a calumny and insult to the English nation to say, that they dethroned him; for although his persisting in such acts would have justified the nation in deposing him, had he thought proper to make those attempts and retain his sceptre in defiance of them,

King James prevented the people from dethroning him, by his dereliction of the regal office.

M

yet



BOOK I.  
CHAP.  
VIII.

yet he eased them of the odious task, by abandoning his own situation and really and substantially abdicating his throne, or quitting or giving up the royal authority and executive magistracy.

Effects of  
king James  
having vio-  
lated his  
trust.

After the full account given by my Reverend Correspondent of the illegal and unconstitutional acts of king James the Second, and his avowal, that “the whole nation had risen against James;” (p. 141) that “he found nothing to stem the impetuous torrent “but a scanty handful of Roman Catholics, who were the only “persons on whom he could venture to rely;” and that (p. 142) “he pushed them forwards on all occasions, in violation of the “law, and contrary to the inclinations of his people,” is it possible for any man of common sense or honesty not to see and allow, that the king had determinately ceased to execute the trust reposed in him by the nation, which had made him the first magistrate to execute and preserve the laws, which were the direct emanation of the general will of the community? For it is evident to demonstration, that the constitution of England would no longer have been what it was intended to be, had the king been allowed for any reason to act against his coronation oath, to refuse or suspend the statute law by his royal proclamations, and in general to act “in violation of the law, and contrary to the inclinations “of his people.” That government, which by the law of God and nature this community was authorized to choose, and had actually chosen to adopt, could not continue to subsist under such an assumption



assumption and usurpation of power by the crown. They were under no obligation to assume a new form of government, but they were under an obligation of having some government, by the general dispensation of God's providence over society. The moral obligation therefore of those persons, who were then the delegates of the community (i. e. the members of both houses of parliament), was to preserve and secure that form of government, which they knew to be the will and wish of the community to be ruled by; it was consequently their indispensable and supereminent duty to remove, as far as in them lay, both the present and future occasions of its dissolution. Our ancestors, in executing this conscientious discharge of their trust commission or delegation to superintend and preserve the safety and welfare of the community, could only use their human judgment and discretion to direct their actions: and it was impossible for them under the existing circumstances and their general convictions not to judge, that the profession of the Roman Catholic religion was the immediate cause or pretext, why James II. had acted so illegally and unconstitutionally; and therefore their moral duty obliged them to remove and prevent that cause and pretext from operating in like manner upon future sovereigns. Their power could not exceed their delegation: this was from the civil community, and therefore could affect nothing but the civil right and power, which could be delegated by the community. It was essentially circumscribed, because it was originally instituted

BOOK I.  
CHAP.  
VIII.

Moral duties  
of our ancestors  
to prevent the  
dissolution of  
government  
according to  
the best of  
their judgment.



## BOOK I.

CHAP.  
VIII.

and directed by the law and light of nature implanted by God in every rational being. No conscientious plea of any other person to disturb and subvert that government, of which they were deputed the trustees and guardians, could justify them in abandoning their duty and trust, and deceiving their constituents.

The revolution of 1688, and the principles, upon which it was formed, are objects of so interesting a nature to every Englishman, that I hope I shall need no apology for dwelling so long upon them. But I must entreat my readers to consider how far my Correspondent is warranted in compressing the question into the following interrogatory (p. 146), "Whether in the given case or in any other possible circumstances it is lawful for the people to dethrone their sovereign merely on account of the difference of his religion, which is the principle, upon which *you* support the revolution?" I deny the very act of dethroning: and indeed so does the letter-writer, (p. 144.) "James retired from the kingdom on the 23d of December, and whatever right the nation might have to claim or elect another sovereign, when by withdrawing the executive power he interrupted or dissolved the settled form of government," &c. Now, the king who *retires* and in his own person *withdraws the executive power*, and thereby *interrupts and dissolves the government*, cannot be said to be dethroned or deposed by his subjects, as is self-evident. Little war-  
rantable

James not  
dethroned by  
the people.



rantable then are the false dangerous and unconstitutional deductions of the letter-writer in favor of *passive obedience* and *non-resistance* to the illegal and unconstitutional actions of king James, when he says, that "he cannot as a Christian Theologian acknowledge the smallest degree of equity and justice to be found in any of the acts of violence, which were practised against a lawful sovereign by his own subjects." This Christian Theologian ought to have examined the nature of the case before he had hazarded his opinion so roundly upon it. He should at least have spoken more distinctly. True it is, that no subject can with justice and equity practise violence against his lawful sovereign, in *that*, in which he is *lawful sovereign*; that is, he cannot lawfully disobey his sovereign, in any thing, which his sovereign has a right to command: for in this and in this alone is he his *lawful* sovereign. The Theologian has borrowed his ideas of *passive obedience* from the fathers and other divines, who, generally speaking of the duty of obedience to civil power, kept only in view the Roman empire or other absolute monarchies, in which the legislative power resided in the sovereign. In such governments *quod principi placet legis habet vigorem* was the common measure both of the legislative and executive powers, which were concentrated in one and the same individual. They knew not the free government of our constitution. With them the monarch was *lawful sovereign* in all, that he chose to say and do: therefore complete *passive obedience* and *non-resistance* were the duty of his subjects: as they are with us a duty to the legislature.

BOOK I.

CHAP.  
VIII.Theologian's  
misrepresentation of the  
resistance to  
king James.*Passive obedience* and *non-resistance* applicable to absolute monarchies as they are to our legislature.



BOOK I.  
CHAP.  
VIII.

legislature. (In both cases I except unlawful commands against the revealed law of God and nature.) He deceives himself in applying the term *lawful* to sovereign: James II. was *lawful* sovereign; that is, he was the *legal* hereditary king of England: but he was not *lawful* sovereign, so as to make or repeal laws of his own authority, and force them upon his subjects. In such attempts he ought to be resisted; as much as the house of commons ought to be resisted, should they pretend by a vote or act of their house only, to repeal or alter the statutes of the realm. If because one constituent part of this constitution have a portion of *lawful* power annexed to it, we are not to resist any usurped power, that such constituent part may choose to assume, and which the constitution has not given to it, there will be an immediate subversion of the whole constitution, whenever one of the three parts of it shall be bold enough to exercise a power, which it has not. Such was the power assumed by the house of commons in the days of Oliver Cromwell, which operated a temporary subversion of the constitution. As well might it be argued, that because a bailiff has lawful power to arrest a man, therefore he may not be resisted, should he undertake to condemn and lead him to the gallows. So far therefore from there being no right in the nation or individuals to resist the illegal and unconstitutional acts of king James, that I ever shall maintain such resistance to have been a duty, as the only means of preventing the subversion of the constitution, by which this community chose to be governed.

In the case of king James's attempting to exercise absolute power, resistance became the duty of those to whom the preservation of the constitution belonged.

Irrelevant



Irrelevant therefore to the main question are all my Correspondent's forced opinions about the abjuration of the deposing power on account of spiritual excommunication. I have repeatedly said, and I flatter myself *truly*, that real *spiritual* excommunication can *ex vi sua* produce no civil effect whatsoever: therefore it can neither weaken nor strengthen the title to *civil* power. Equally inconclusive are his desultory dissertations upon the duty of an English king to give a civil establishment "to the only true revealed religion of Christ," which he of course supposes to be the Roman Catholic religion, which James himself professed. He should have recollected, that a king of England can neither make, alter, dispense with, nor repeal any law: and he is personally as much obliged to execute the law as it is, as any subject is to obey it\*. The whole *civil* legislature is bounden to act by the *light* and *law of nature*: for the Christian revelation made no

A king of England cannot give any civil establishment to any religion, having no legislative power.

\* This duty of a sovereign to obey and execute the laws of a State, even to the prejudice of the religion, which he himself professes, when different from that, which is generally professed by the majority of his subjects, is clearly exemplified in the existing government of the elector of Saxony: he is a Roman Catholic: the established religion is the Lutheran, that being professed by the majority of the electorate. By the laws of that State, the public profession of the Roman Catholic religion, such as public church service, processions, ceremonies, wearing ecclesiastical habits, &c. are confined to the electoral palace, *intra muros palatii*: and the elector is moreover obliged to have one third of his servants and attendants of the Lutheran persuasion.

alteration



BOOK I.  
CHAP.  
VIII.

alteration in the nature, extent, or duties of the *civil* magistrate.

The appro-  
bation of a  
*civil* establish-  
ment of a  
particular re-  
ligion imports  
no approba-  
tion of the  
truth of it.

My exclusive view in attempting to refute the arguments of my Correspondent is, to throw full light upon the subject under discussion: for this end, I call the attention of my reader to this most singular of all his arguments (p. 175), That “as  
“ many of our (meaning Roman Catholic) gentlemen are daily  
“ dispensing in all companies on different subjects of their reli-  
“ gion strange and numberless incongruities, literally without  
“ knowing the import of the words which they make use  
“ of,” &c. and to a corollary, which he deduces from his own  
conceits or suppositions, that “as a Catholic, I cannot in any  
“ supposition give my approbation to the civil establishment of  
“ the Protestant religion, by whatever means it was introduced  
“ into this kingdom,” &c. If this establishment of the Roman  
Catholic religion in any manner involved the truth of that re-  
ligion, I certainly should subscribe to his corollary; but, as I  
hold that it is only the provision made by the community for  
the means of exercising a religion, which the majority have  
chosen to profess, and which choice the *community* cannot con-  
trol, I must lay this corollary to the account of a zeal more  
purely intended, than maturely considered, or fairly regulated.  
It is not from the feeling of the moment, but from immutable  
rectitude and consistency, that conclusions are to be established  
upon matters of this transcendent importance. Nor do I notice the  
6  
opinions



opinions and assertions of my Correspondent, because they clash with mine; but merely to elucidate the discussion of a subject, that highly interests the peace and welfare of my countrymen. Some of the most effectual remedies are often composed of poisonous ingredients. The propagation of error often provokes the illumination of truth. And I flatter myself that the excessive warmth of this Divine, which in some instances has betrayed him into inconsiderate assertions upon this subject, will procure him credit for the more temperate effusions of his cooler reflections, that contradict these hasty efforts of a well-meaning zeal. He says, for example, p. 167, "that he readily agrees  
 "with me, that the people had a right to proceed to the violent  
 "means of deposition, which was the only expedient left to  
 "assert their freedom in points, in which it is most essential for  
 "men to be free:" He here speaks of the free choice and exercise of religion. In p. 160, he says, that "where the majority  
 "of a nation has given a civil establishment even to a false religion, so that the minority cannot assert their natural rights  
 "without incurring the most grievous scandal both in Church  
 "and State; and where similar circumstances occur, in whatever  
 "part of the world; the same forbearance ought to be observed,  
 "and the same submission shewn to the prevailing powers of a  
 "State in all temporal concerns; however greatly the first right  
 "of man, which is to be allowed the free exercise of true  
 "Christian religion, should be infringed by them. This, at least, was Bellarmine's opinion," &c. This clearly proves,

BOOK I.  
 CHAP.  
 VIII.

Civil sanction  
 to be allowed  
 even to the  
 erroneous religion of the  
 majority.

Bellarmino of  
 the same opinion.

N

that



BOOK I.  
C H A P.  
VIII.

that for the safety and welfare of the State, the will of the majority is to be revered and submitted to, even in giving a *civil* sanction to an erroneous religion; for of such in his opinion he is avowedly speaking. In another place he allows, that the overthrow and subversion of a *civil* establishment of an erroneous religion, in which a decided majority of a nation concurs, ought not to be attempted even by apostles themselves. Now, if this civil establishment imported either the truth or falsity of the religion established, it is certain, that the more persons were involved in the error, the stronger would be the conscientious reason for opposing it: for numbers cannot justify, nor power give sanction to error and falsehood. Yet, says he, p. 159,

The subver-  
sion of a *civil*  
establishment  
of a false re-  
ligion in a  
large and  
powerful na-  
tion, not to  
be attempted  
even by apo-  
stles.

“ Though Catholics still believe the same profession of faith to  
“ be orthodox, and the same profession of faith to be heretical,  
“ which were respectively deemed such in the days of Henry  
“ VIII, and Elizabeth; yet it is clearer than noon-day light,  
“ that where an heterodox establishment through whatever  
“ means has been once firmly settled in a large and powerful  
“ nation, such as ours is; a violent subversion of the same could  
“ not at any time be attempted, without the most grievous scan-  
“ dals ensuing both to the believing and unbelieving party,  
“ though even such attempts were projected by apostles them-  
“ selves.” Now, if the *civil* establishment given to any reli-  
gion become unlawful, because the religion to which it is given  
is false, I, who am convinced of that falsity, and that the *civil*  
establishment tends to countenance and encourage the error,



cannot under such conviction approve of the establishment :  
 for, as no length of time can convert falsehood into truth, nor  
 change or weaken the precepts and injunctions of an immutable  
 being, so no power strength or respectability of a community can  
 render that lawful and proper in *a large and powerful nation*,  
 which would be unlawful and sinful in a private individual.

BOOK I.

CHAP.

VIII.

No length of  
 time can ve-  
 rify falsehood  
 nor justify sin.

Having thus endeavoured to investigate and disclose the real  
 principles, upon which the revolution was effected by our an-  
 cestors, and is cherished and supported in its consequences and  
 effects by their posterity, it will be proper next to enquire into  
 the obligations and doctrines upon these State matters settled at  
 our revolution of 1688, which are unequivocally expressed and  
 solemnly adopted by those, who take the oath prescribed by the  
 31st of his present Majesty.

BOOK I.

CHAP. IX.

The conse-  
 quence of the  
 revolution.



## C H A P. IX.

OF THE OATH PRESCRIBED TO BE TAKEN BY ENGLISH  
ROMAN CATHOLICS, AND OF THE CIVIL OBLIGATIONS  
ASSUMED THEREBY.

*The Oath. The Act of Settlement. Condition of Protestantism annexed to the Tenure of the Crown. Extent of Civil Jurisdiction. Nature of the Revolutionary Succession which Catholics swear to defend. The Oath imports all Whig Principles. Every Roman Catholic Divine has upon Oath renounced Ultramontane Doctrines as Protestants now disavow the Jure Divino Doctrines. The Oath of James the First against the Temporal Power of the Pope. Difference of modern Roman Catholics from their Ancestors not in Religion but in Politics. Allen and Father Parsons. What the present Oath pre-supposes.*

BOOK I.  
CHAP. IX.

The consequence of the revolution.

THE consequence of the revolution of 1688 was the public and unequivocal approbation and adoption by the nation of those principles, upon which it was effected. The government, which continued to be holden and supported upon these principles, was evidently entitled to withhold its advantages from such subjects, as should refuse to assent and submit to them. James the Second, who upon these principles, was with his whole posterity for ever excluded from the British throne, was a Roman Catholic. Such British subjects therefore as professed that religion,



gion, have been ever since kept out of the advantages of the State, until they should upon their oaths have adopted the principles, upon which that prince and his posterity had been actually kept out. If they continued to hold the doctrines and principles supposed to have been maintained by that abdicated monarch, they were deemed subjects dangerous to the Constitution, and their exclusion from the benefits of the State became an act of necessary justice; but if they disavowed them and adopted in common with other British subjects those principles, upon which the constitution and government of this country were originally framed by our Roman Catholic ancestors, and have been more expressly supported and maintained since the revolution, to punish them by such exclusion and disability would be an act of transcendent injustice. Since the æra of the revolution various have been the tests, by which Roman Catholic British subjects have been called upon to express their adherence to these fundamental principles of the British constitution: the form of words, by which they now declare their adoption of these civil doctrines, is prescribed by the 31st of his present majesty to the following effect:

“ I A. B. do sincerely promise and swear, that I will be faithful and bear true allegiance to his majesty king George the Third, and him will defend to the utmost of my power against all conspiracies and attempts whatever that shall be made against his

BOOK I.  
CHAP. IX.

Right of demanding a civil test.

The oath now required from Roman Catholics.



BOOK I.

CHAP. IX.

“ his person, crown or dignity ; and I will do my utmost endea-  
 “ your to disclose and make known to his majesty, his heirs and  
 “ successors, all treasons and traitorous conspiracies which may be  
 “ formed against him or them ; and I do faithfully promise to  
 “ maintain, support and defend, to the utmost of my power,  
 “ the succession of the crown, which succession, by an act in-  
 “ titled, *An act for the further limitation of the crown, and bet-  
 “ ter securing the rights and liberties of the subject*, is and stands  
 “ limited to the Princess Sophia, Electress and Duchess Dowager  
 “ of Hanover and the heirs of her body *being Protestants*, hereby  
 “ utterly renouncing and abjuring any obedience or allegiance unto  
 “ any other person claiming or pretending a right to the crown  
 “ of these realms ; and I do swear, that I do reject and detest as  
 “ an unchristian and impious position, that it is lawful to mur-  
 “ der or destroy any person or persons whatsoever, for or under  
 “ pretence of their being heretics or infidels ; and also that un-  
 “ christian and impious principle, that faith is not to be kept  
 “ with heretics or infidels : and I further declare, that it is not  
 “ an article of my faith, and that I do renounce, reject, and ab-  
 “ jure the opinion, that princes excommunicated by the Pope  
 “ and Council, or any authority of the See of Rome, or by any  
 “ authority whatsoever, may be deposed or murdered by their  
 “ subjects, or any person whatsoever ; and I do promise, that I  
 “ will not hold, maintain or abet any such opinion, or any  
 “ other opinion contrary to what is expressed in this declaration ;  
 “ and



“ and I do declare, that I do not believe that the Pope of Rome, BOOK I.  
 “ or any other foreign prince, prelate, state or potentate, hath CHAP. IX.  
 “ or ought to have any temporal or civil jurisdiction, power,  
 “ superiority or pre-eminence, directly or indirectly, within this  
 “ realm: and I do solemnly in the presence of God profess, tes-  
 “ tify and declare, that I do make this declaration, and every  
 “ part thereof, in the plain and ordinary sense of the words of  
 “ this oath, without any evasion, equivocation or mental refer-  
 “ vation whatever, and without any dispensation already granted  
 “ by the Pope, or any authority of the See of Rome, or any per-  
 “ son whatever, and without thinking that I am or can be ac-  
 “ quitted before God or man, or absolved of this declaration, or  
 “ any part thereof, although the Pope or any other persons or  
 “ authority whatsoever shall dispense with or annul the same, or  
 “ declare that it was null or void.

“ SO HELP ME GOD!”

Such is the oath, which has been required of and taken by the bulk of his majesty's Roman Catholic subjects. That body of men stands therefore in this peculiar circumstance, that of all his majesty's subjects, they alone are committed upon oath to believe and support those principles, which since the revolution of 1688 have been distinguished by the emphatical appellation of *revolution* or *whig* principles; they are directly subversive of the *tory* principles, which were the favourite and unconstitutional doctrines of the Stuarts, and in their end proved so ruinous to that ill-fated

Roman Catholic subjects alone are committed upon oath to reject tory principles.



BOOK I.  
CHAP. IX.

Roman Catholics may be termed *sworn whigs* and *cisalpines*.

ill-fated family: they are also pointedly repugnant to the *papal*, otherwise called *transalpine* or *ultramontane* doctrines, which were generally holden and steadfastly maintained by the leaders of the Roman Catholic party from the days of queen Elizabeth up to the present century. The English Roman Catholics may therefore be now properly styled *sworn whigs* and *cisalpines*. Upon the effects of so public and solemn an instrument as that of an oath, every man is at liberty to deliver his thoughts: I shall do it with that freedom, which the importance of the subject demands.

From my Reverend Correspondent's letter I am apprehensive, that there is much active and passive misrepresentation at this moment upon the subject: we must open the discussion by stating some of his doctrines. He lays it down as a principle (p. 106), "that no part of the *civil* establishment of the Protestant religion can of its own nature, *ex vi sua*, be binding on the conscience of man:" and he further says (p. 108), "Neither the divine law, nor the institutions of men could lay a conscientious obligation upon Catholics to pay tythes or other burdens imposed by the State for the support of the established church and its ministers, whom in their conscience they knew to be erroneous."

Inconsistent reasoning upon this oath.

In the sense, in which I have before said, that no civil power can by its act, *ex vi sua*, bind the conscience, I admit it: but he, who holds the contrary, runs into unmeasurable folly and mischief.



mischief. For either it is not binding, because the legislature had no power to enact the law, or being enacted, the subject was at liberty or under obligation not to comply with it. Mark his reasoning: A Roman Catholic is such, because "he believes all other religions to be erroneous:" but 1st, "A civil establishment given to an erroneous religion is in its nature unjust and unholy, or directed to an unjust or unholy end: 2d, The countenancing and inculcating of error never can tend to the essential good of a community: 3d, Under the delegation of Heaven no power can be enjoyed by men to enact laws to lead men astray." The ultimate consequence therefore according to his argument is, that every law of this country, which tends to support or countenance the Protestant religion is not binding; and therefore ought not to be complied with: but, the Act of Settlement, which limits the crown to the heirs of the body of the Princess Sophia *being Protestants*, certainly tends to countenance and inculcate the Protestant religion; therefore (according to him) it is not binding and ought not to be complied with.

BOOK I.  
CHAP. IX.

Those, who have sworn to support and maintain this succession by an oath approved of by their spiritual superiors, must be in a strange dilemma, if the observance of it should involve them in criminality before God. It is to be presumed, that they took the oath with full deliberation, as they mean to observe it without any qualification. Yet must it be allowed, if

What the oath, if taken deliberately, imports.



BOOK I. in the principles of the letter-writer (p. 105), "no Catholic  
CHAP. IX. "can conscientiously give his sanction and approbation to the  
 "civil establishment of any other religion, because he knows such  
 "establishment to be a means of inculcating error or falsehood,  
 "which in no circumstances is man allowed to forward and pro-  
 "mote by a positive act of his own concurrence," that then the  
 fifty thousand English Roman Catholics, who with their bishops  
 at their head have taken the late oath, have either forsworn  
 themselves, or, if they were sincere in taking the oath, they  
 come under the full censure of my Reverend Correspondent's  
 severe anathema against the supporters and maintainers of the  
 whig principles, upon which our revolution in 1688 was ef-  
 fected. The continuance of the condition of *Protestantism* being  
 annexed to the tenure of the crown is in fact the most direct  
 assurance of the continuance of the *civil* establishment of the  
 Protestant religion in this kingdom. A subject therefore who  
 is no legislator, cannot *forward and promote by a positive act of*  
*his own concurrence* this establishment more emphatically and  
 effectually, than by a voluntary oath to "support, maintain,  
 "and defend that succession to the utmost of his power."

Protestant  
 succession is  
 the support of  
 the *civil* esta-  
 blishment of  
 the Protestant  
 religion.

Whoever may have read the publication of this Roman Catho-  
 lic Divine impartially, will of course presume, that he never has  
 taken this oath: but by his not styling himself a *non-juror* we  
 are to suppose, he has taken it. It is however notorious, that  
 the bulk of those, to whom he thus incoherently dictates and  
 dogmatizes, have sworn it.

The



The obvious plain and unequivocal sense, in which the person, whom he particularly addresses, took that oath (he speaks for himself alone), was to call God to witness, that he really and truly admitted king George III. to be his lawful king, to whom as to the first executive magistrate he was to express his allegiance to the State; and this, because the nation had a right and had actually exercised that right to limit the crown in the line, in which he has taken it with all its conditions prerogatives and privileges annexed unto it: the first of these conditions is that of *being Protestant*. This condition, which was annexed to the crown by the nation at the revolution, was not giving a *civil* establishment to the Protestant religion, as the letter-writer falsely asserts, but it presumed its previous existence, tended to ensure its continuance, and demanded from those, who swore to support the altered succession, to admit also *this essential condition*, upon which the alteration was made. By this oath the juror expressly renounces his allegiance to any person, *not being a Protestant*, to whom the crown of England would otherwise have devolved in succession. The solemnity of the oath created in fact no new obligation upon a resident in this country of obeying the laws, to which it is subject whilst he continues to reside here: but it produced a further effect by imposing an obligation upon the juror, which attaches upon him during his life, in whatever part of the world he may be, until he be released from it by the sovereign power of that State, to the supreme magistrate of which he has sworn allegiance.

BOOK I.  
CHAP. IX.

True and obvious sense of the oath.



## BOOK I.

## CHAP. IX.

Civil laws co-  
extensive with  
the geogra-  
phical jurif-  
diction of the  
legislator.

How the ob-  
ligation of an  
oath of alle-  
giance fol-  
lows a person  
out of the  
country, in  
which he  
took it.

No civil law can bind beyond the geographical extent of the legislator's jurisdiction. From the moment I quit England the conscientious tie of observing its laws, which arises out of the general ordinance of God's providence, operates not upon me in respect to the laws of England, which I have quitted, but in respect to the laws of the land, in which I am resident: for by the violation of these latter can I alone break in upon the effects of that general providence, which imposes upon all men a conscientious obligation of co-operating according to their means and power in the preservation of government and consequently of society. But as I said before, a person, who has sworn to support maintain and defend the succession of the house of Hanover, cannot without breach of that oath concur in any measure, even should he establish and incorporate himself in another community, to alter and subvert that succession. I know it to be an *axiom* in our law, that *nemo potest exuere patriam*; in the true sense I admit it, in as much as no man born in England can when in England plead an exemption from the duties, which his country demands of him: but it does not follow, because the civil power may punish a man even unto death, that therefore the action, which was so punished was conscientiously criminal or sinful before God. Suppose for example, that an Englishman chooses to quit this country and reside and settle in a foreign State, Holland, Spain or America. He is naturalized in another State, has purchased land in it, and given up all intentions of returning to his native country. In all this he has neither sinned  
against



against God nor man. But whithersoever he goes, he cannot get out of the reach of the divine precept of *submitting to the powers that be*; he is therefore under the same conscientious obligation of submitting to the laws of the State, in which he has settled, as he was to submit to the laws of England before he quitted it.

His oath to support maintain and defend to the utmost of his power the Protestant succession of the house of Hanover, would not cease by his quitting the country, but would oblige him not to take up arms to destroy or defeat it: for a man cannot by his own voluntary act release himself of an obligation, which he has voluntarily assumed. The obligation of the law extends not beyond the geographical boundaries of the legislative jurisdiction: but the obligation of the oath personally binds the conscience of the juror, wherever he may be. Supposing a war between England and the State, in which he may have settled; he cannot plead an exemption from the service, which may become politically necessary for the defence of the country, which he has chosen for his residence; yet if in this act of *civil* duty to the State, which the precept of God conscientiously obliges him to obey, he be taken prisoner, he might be tried here (as Dr. Storie was\*) for rebellion, and be lawfully executed for

Obligation of  
the oath of  
allegiance.

\* Dyer's Reports, p. 300. He had quitted his country and sworn allegiance to Philip king of Spain: he was taken in arms, and indicted for high treason: and although he pleaded that he was no subject of the queen, yet was he convicted and executed as a traitor.

high



BOOK I. high treason. I state these cases merely to elucidate the more  
 CHAP. IX. clearly the nature of the conscientious obligation of observing  
*civil* laws: where the community has deputed to one or more  
 the power of enacting them, the obligation of observing them is  
 not in the least affected by the motives, reasons or judgment of  
 those, who pass them.

Municipal  
 laws do not  
 directly affect  
 the con-  
 science.

Whatever the subject of the law may be (be it ever so sacred)  
 if enacted by the *civil* legislature, it can only be a *civil* law, and  
 therefore imposes *ex vi sua* no conscientious obligation: if, for  
 example, a law be made against adultery, annexing to it capital  
 punishment, the guilty person's conscience would indeed be affect-  
 ed by the violation of God's commandment, "Thou shalt not  
 commit adultery," but not otherwise by the civil law, than by  
 the general precept of "obeying the powers that be." This  
 will appear evident to a person, that considers that the same  
 sinful act committed in different parts of the globe, cannot vary  
 in the degree of moral depravity or criminality merely from the  
 circumstances of locality and a variation of municipal laws; and  
 yet in one place, by the commission of the sin of adultery, he  
 may incur no corporal punishment, in another he may lose  
 his life.

Those, who enact laws must be directed in their judgment by  
 their own sense and uprightness: there ever must be a necessary  
 difference in men's judgment upon all human objects, and these  
 alone



alone are objects of human laws; therefore our constitution has wisely decreed, that the majority shall in all cases have the same effect as absolute unanimity. The submission of those, who delegated the sovereign or legislative power, is committed and bounden by the acts of their own delegates. The mental approbation of any particular law is not necessary to the legal and requisite observance of it: wherever there is a majority, there must be a minority, and that essentially consists of non-approvers of the law: yet it authorises them not to resist the law. If my Correspondent's inference be true, that because "no power can be "enjoyed by men to enact laws to lead their fellow-creatures "astray, and no Roman Catholic convinced to a degree of perfect moral certitude of the truth of his own religion can admit "a probability or even a possibility of truths subsisting in any "other," therefore the laws, by which the majority have given a civil establishment to another religion than their own, are null, with what conscience could the body of Roman Catholics swear to support and maintain the *Protestant* succession as the immediate preserver of this very establishment? The nation, which deposes these delegates or legislators, has no control over their thoughts or consciences; and it is very possible, that they may all individually err in some leading principle as to their own consciences, and may be bounden in consequence of that very erroneous principle to enact laws conformable to it, which will notwithstanding oblige the minority of the legislators, who

How members of a representative State committed by the acts of their own delegates.

Minority bounden by the acts of the majority, though passed against their own convictions.



BOOK I. who have full certainty of the error, and all their constituents to  
 CHAP. IX. observe them.

The same obligation to give *civil* sanction to a *false* as to a *true* religion when professed by the majority.

I will suppose, as really I think, that the Protestant religion is erroneous (if I thought otherwise I should adopt it); yet I hold that the legislators, who think it not so (for if they thought it erroneous they would abandon it), are as much bounden to support it by *civil* sanctions, being now professed by the majority of the nation, as Roman Catholics would be to give a *civil* establishment to their religion, were they the legislators, and the majority of the nation professed the Roman Catholic religion. But the *civil* laws, which would in either case be enacted to give *civil* sanction to either of these different religions, would be of equal force; for that proceeds from the free act of the majority of the legislators; it depends not upon the rectitude of their judgment, but upon the exercise of their delegated authority: *quia legislator habet jus præcipiendi*: I always keep in the supposition of the law being within the competency of the civil power: for it is not competent for any human authority to enact what is forbidden by God, or what is against the light and law of nature. A law enjoining the payment of tythes to a Protestant clergyman or a Roman Catholic priest, would be equally binding upon the community, whichever of them were in error or truth before God.

The discussion of the present question is not a theoretical investigation



vestigation of a point of controversy, but an enquiry how far many thousands of English, Scotch and Irish Roman Catholic subjects of his majesty are capable of observing an oath, which they have lately taken as a test of their affection and submission to the laws and constitution of their country. They have positively sworn "to maintain, support and defend to the utmost of their power the succession of the crown," as limited by the Act of Settlement: but by that act the *condition of protestantism* is annexed to the succession; and that condition evidently makes an essential ground of the *civil* establishment of the Protestant religion, which all Roman Catholics must believe to be erroneous. How then, in following the reasoning of this Roman Catholic clergyman, can they in conscience take such an oath? He says, (p. 106) "By the general law of conscience a civil establishment of error can never be approved of by those, who know the tendency of it; nor can any part of such establishment of its own nature, *ex vi sua*, be binding on the conscience of men. The reason whereof is drawn from the nature and acknowledged principles of all human laws: 1. Because all objects comprised under such an establishment are either of their own nature unjust and unholy, or directed to an unjust or unholy end. 2. Because the countenancing and inculcating of error never can tend to the essential good of a community. 3. Because under the delegation of heaven no power can be enjoyed by men to enact laws to lead their fellow-creatures astray."

The oath taken by the Roman Catholics in consequence of the Act of Settlement is inconsistent with the Roman Catholic doctrine.

False reasoning against the validity of the laws which give civil sanction to the Protestant religion.

P

Now



BOOK I.  
CHAP. IX.

The oath  
taken by the  
Roman Ca-  
tholics incon-  
sistent with  
the Roman  
Catholic Di-  
vine's doc-  
trines.

Now it is impossible, that any person, who reflects upon the circumstances of those days, should not know, that the condition of Protestantism was annexed to the Succession for checking the growth of what the nation called Popery, and in fact for preventing the Roman Catholic religion from acquiring a *civil* establishment in this kingdom. If then a Roman Catholic cannot, according to this Divine, conscientiously approve of the Protestant succession, because he knows the tendency of it, viz. that it is meant and intended to ensure the civil establishment of the Protestant religion, how can he swear *to maintain, support and defend it to the utmost of his power*? The succession, according to the Act of Settlement, is not the old legal succession of the crown of England by *common law*, as it existed before the revolution; but altered at the revolution from that ancient succession by the exclusion of all Roman Catholic heirs, and by the necessity of the king's *being a Protestant*, and marrying a Protestant. They have therefore formally sworn, whilst this act remains in force, to submit to no king, who is not a Protestant: consequently they have sworn to *support, maintain and defend to the utmost of their power*, the most efficacious means of preserving the *civil* establishment of the Protestant religion: but “if no (p. 105) Catholic can conscientiously give his sanction  
“and approbation to the civil establishment of any other religion,  
“because he knows it to be a means of inculcating error and falsehood, which in no circumstances is man allowed to forward  
“and promote by a positive act of his own concurrence;” then  
cannot



cannot he swear "to support, maintain and defend the Protestant succession to the utmost of his power," for no man *can forward or promote the civil establishment of the Protestant religion by a more positive act of his own concurrence, than by such a solemn oath. It is impossible for any Roman Catholic thinking with the letter-writer to take this oath *salvâ conscientiâ* and *bonâ fide*; for by his argument every Roman Catholic must know the Protestant religion to be erroneous, therefore he cannot lawfully swear to do his utmost to support and maintain the present succession, which is a direct mean of preserving the civil establishment of what appears to him an erroneous religion. In what spirit, with what intention, under what conditions or reservations such arguers have sworn *to do their utmost to support, maintain and defend the Protestant succession*, a reflecting public cannot yet fully discover. Those however, who do not subscribe to this mode of reasoning, and who have upon mature deliberation and full investigation of the principles, upon which they swore, taken the late oath in the fair obvious and exclusive sense and import of its words, owe it to their country and to themselves, to prove to the public, that they have not sworn in defiance of any political principles, which they maintain, nor in contradiction to any tenets of the Roman Catholic religion, which they profess.*

Every oath ought to be so explicit in its words, as to admit of no doubt of their meaning and tendency: I cannot therefore ad-



## BOOK I.

## CHAP. IX.

The *animus imponentis*.

The oath implicates not the truth or falsity of the Protestant religion.

True ground of swearing to support the Protestant succession,

mit, although it may be the opinion of many very respectable authors\*, that the sense put upon an oath by the framers of it contrary to what the words import to the juror, will justify a person in taking it under such explanation. But when the evident sense of the framers of an oath concurs precisely with the obvious import of the words, as they are understood by the juror, he is then unquestionably secure in swearing: so in this oath, the framers of it evidently presumed and intended, that the truth or falsity of the Protestant religion was not compromised in it, because it was framed to be taken by persons, who thought the Protestant religion *not* to be true, and *because* they thought it *not* to be true. By the obvious meaning and tendency of the words of this oath, a Roman Catholic juror, who does not believe the Protestant religion to be true, is equally bounden, with every Protestant, who does believe it to be true, to support and defend the *Protestant* succession, which tends directly to secure the *civil* establishment of the Protestant religion, and for the same reason and upon the same grounds, viz. because it is a law of the land; not because the Protestant religion is true. It is a law because enacted by the proper deputies of the community, who alone can have legislative authority; consequently who alone are intitled to that

\* "As oaths are designed for the security of the imposer, it is manifest they are to be *interpreted* and performed in the sense, in which the imposer intends them, otherwise they afford no security to *him*; and this is the meaning and reason of the rule, *jurare in animum imponentis*." Paley's Principles of Moral and Political Philosophy, b. iii. c. 14.



submiffion of the community, which is requifite to fupport go-  
vernment, and this is the end of fociety instituted by an om-  
nifcient Creator, “ who adds the fatisfaction of his will to every  
“ law of fociety, which promotes his own purpofe, the com-  
“ munication of human happinefs\*.” The grounds and reafons  
for their enacting this particular law were the peace and welfare  
of the community, which alone were the objects of their delega-  
tion. As long as this Act of Settlement remains in force, fo long  
will my oath continue to bind me : and that will be, as long as the  
reafon of the act fhall laft : this is not the truth of the Protef-  
tant religion, but the conviction of the major part of the com-  
munity, that it is true : the majority for an opinion is no proof  
of the truth of it, as is evident from the fluctuation of opinions  
and the immutability of truth.

BOOK I.  
CHAP. IX.

I have faid thus much upon the Act of Settlement, becaufe  
it was the only act of the revolution, which affected the Roman  
Catholics more than any other description of his majesty’s sub-  
jects : this Act of Settlement and the abolition of the difpenf-  
ing power in the crown were the only two alterations made at  
the revolution. The latter is not mentioned by the letter-  
writer ; I therefore fhall add nothing to what I faid upon that  
fubject in the 12th chapter of my *Jura Anglorum*. But the  
Act of Settlement was the act, by which the nation for-  
mally ratified and confirmed the exclusion of king James and  
all Roman Catholics or perfons marrying Roman Catholics from

No act at the  
revolution af-  
fected Roman  
Catholics in  
particular,  
but the Act  
of Settle-  
ment.

\* Paley, vol. ii. c. 9.

the



BOOK I.  
CHAP. IX.

the crown, and which annexed the condition of *protestantism* to the tenure of the crown. It must therefore be on account of what I have said upon this Act of Settlement, that my Reverend Correspondent tells me (p. 110.) "that I appear to be inconsistent with the character of a Catholic, which I profess, in approving the principles of the revolution, by which the Catholic religion is banished for ever from this kingdom." Whoever values his character, must be allowed some earnestness in repelling the charge of inconsistency upon so serious a subject. Whatever effects were produced at the revolution upon the Roman Catholic religion were all produced by this act, which established the Protestant succession: but if it be inconsistent with "the character of a Catholic to approve of the principles of the revolution, by which the Catholic religion was for ever banished from this kingdom," how much more inconsistent must it be with that character to swear "to maintain support and defend to the utmost of my power the succession as settled by that very act!" for by this I presume he means to insinuate, that the "Catholic religion was banished for ever from this kingdom." His idea is neither just nor true: for the Act of Settlement imposes no new penal law upon the body of Roman Catholics, though it incapacitated any Roman Catholic to hold the crown. If king James II. had continued king, he would not have had it in his power to alter the laws: and there were none then existing, which gave tolerance to the Roman Catholic religion: but many and heavy laws, which rendered

Act of Settlement imposed no new penal law upon the Roman Catholic body: it only excluded Roman Catholics from the crown.



rendered the profession of it capitally criminal. But I appeal BOOK I.  
to the plain sense and candor of every reader, whether my “ap- CHAP. IX.  
“probation of the principles of the revolution, by which (says  
“my Correspondent) the Roman Catholic religion was ba-  
“nished for ever from this kingdom,” be more inconsistent  
with the character of a Catholic, than to swear, that I will *main-  
tain support and defend to the utmost of my power the very quin-  
tessence of that act*, by which according to him it is so banished.  
For the first I am condemned by an anonymous unauthorized  
(perhaps an indiscreet) Divine; for the other I have the sanction  
approbation and example of all the Roman Catholic bishops,  
most of the clergy, and the generality of the body of my Ro-  
man Catholic brethren in Great Britain and Ireland.

Consistently with what I have before said, it must be allowed,  
that the approbation and example of others would neither sanc-  
tion nor justify my taking of the oath, if I neither approved of  
nor understood the obvious words of the oath to import what I  
knew the framers and proposers of it intended. But although  
a person should not be justified in taking an oath under an in-  
ternal conviction of its unlawfulness, yet might he in some cases  
be conscientiously bounden to refrain from taking an oath pro-  
posed as a common test of a public religious credence (although  
it appear to him unobjectionable) when it is pronounced to be  
unlawful by the guardians and overseers of that religion, to  
which he acknowledges submission: for certainly if there be a

A person can  
in no case be  
justified in  
swearing  
against his  
own convic-  
tion, though  
he may in  
some be con-  
scientiously  
bounden to  
refrain from  
swearing,  
even where  
he sees no  
difficulty in  
the oath.

duty



BOOK I.  
CHAP. IX.

What a Roman Catholic binds himself to by the oath.

duty emphatically within the province of a Christian bishop, it is to settle and approve of a public instrument or test, by which his flock is called upon to make an open avowal and public declaration of their religious faith. But what do the framers and proposers of the oath in question expect from the Roman Catholics, who “swear to maintain support and defend “the Protestant succession to the utmost of their power?” and what do the Roman Catholics bind themselves by it to perform? They are certainly expected to concur both actively and passively, as well as all other subjects, in the observance of the law, which excludes every Roman Catholic from the throne, and establishes the present family upon it as the *Protestant heirs of the body of the Princess Sophia of Hanover*. In taking this oath the Roman Catholic formally admits the right of the nation, to enact the law, which he swears *to maintain support and defend to the utmost of his power*: and in allowing the existence of the law, he solemnly admits the conscientious obligation he is under to submit unto it (as much as to all other civil laws) whilst he remains a member of the community of which it is a law.

In no instance of my life do I recollect to have felt a more sensible humiliation, than when taking this oath in the open Court of Common Pleas: “I solemnly in presence of God professed testified and declared, that I made the declaration and “every part thereof in the plain and ordinary sense of the words “of the oath without any evasion equivocation or mental reservation



"vation whatever," &c. ; unless it be at the moment of my acknowledging, that there ever existed a ground for such humiliating mistrust. It certainly is natural, perhaps not always just, to presume others actuated by the same reasons and motives as ourselves. I only answer for myself. When I swore to maintain support and defend the *Protestant* succession to the utmost of my power, I had previously adopted all the leading whig principles, which *once* were the *criteria* of the true constitutional spirit and doctrines of an Englishman. For without admitting the sovereignty of human power to reside in the people, and without rejecting the doctrines of a *jure divino* indefeasible hereditary right to the crown ; without condemning the doctrines of *passive obedience and non-resistance* as applicable to our king ; without establishing the duty of the community to provide for the safety of the State by such means, as their own judgment shall suggest ; without believing, that their delegation is to provide the means to the decided majority of the nation of exercising the religion, which they think it their duty to profess, how can I swear to maintain support and defend to the utmost of my power the law, which breaks through and destroys for ever the hereditary right to the crown, which is itself an act of resistance to the abused power of the crown, and (without a right in the people) would be an act of usurpation, which declares the profession of the Roman Catholic religion by the sovereign to be incompatible with the welfare of this Protestant kingdom, which confirms and perpetuates the *civil* establish-

What previous principles the oath imports in every juror.

Q

ment



BOOK I.  
CHAP. IX.

ment of the Protestant religion by assuring the supremacy of it to a Protestant king? Yet all this is contained in the oath to "maintain support and defend to the utmost of my power the succession of the crown, as established by the Act of Settlement."

To a person, who had not previously adopted these revolution doctrines, such an oath must be absolutely unlawful. Nor did I ever believe that a necessity for requiring such an oath had at any time existed, till I read this late publication of my Clerical Correspondent. I have heretofore laboured much to procure such an oath or religious test for the Catholic body, as should be approved of by our own bishops, who are proper judges of the oath, by which their flocks declare their unanimous opinion and belief in *religious* matters. And behold, when it has been generally taken by the whole body, and I had humbly endeavoured to explain \* to a prejudiced and uninformed public the real grounds, upon which I had taken this oath, I am in a formal manner condemned of abandoning the principles of my religious faith, because I have approved of those of the revolution; that is, because I have approved of the principles, upon which that was done, which I have sworn specifically *to maintain support and defend to the utmost of my power*. But if, according to my Correspondent's arguments, the *Protestant succession* evidently tend to support the Protestant religion, which in the belief of Roman Catholics is error, I as a Roman Catholic can-

\* In my *Jura Anglorum*.



BOOK I.  
CHAP. IX.

not promote it by a positive act of my own concurrence : now it is evident, that to *maintain support and defend* certain means to the utmost of one's power, is to promote them by a positive act of our own concurrence : and as I have actually sworn so to do, I must either fall under the full condemnation of this Divine, or plead guilty with thousands of open and direct perjury. I prefer the former ; and seriously recommend it to my Theological Correspondent, to revise his thesis upon the *civil* obligations and duties of British subjects. I abandon not my claim to be an orthodox member of the Roman Catholic church, and I still persist in approving of the principles of the revolution of 1688, holding myself now bounden to it by the additional obligation of a solemn oath.

Those who have sworn are according to the Roman Catholic Divine's reasoning guilty of perjury.

Ill would it become a member of the Roman Catholic communion to assert, that his faith had at one time prevented him from taking an oath, which at another time it allowed ; the faith, which is irreformable is not susceptible of these temporising accommodations. I am fully sensible, that the common theological opinions of most schools, until the present century, were generally in favour of many *ultramontane* doctrines, which are now universally exploded by every school : such were the allowing of *temporal* power to the Pope over Christian sovereigns and states, and others, of which I shall speak more fully hereafter. Although such were the opinions of most school divines of those days, it would be now an insult to tax a person with holding

*Ultramontane* doctrines now disavowed by Roman Catholic divines, as the *jure divino* doctrines are now disavowed by Protestant divines.

Q 2

them ;



BOOK I.  
CHAP. IX.

them; they are in fact disavowed upon oath by every English divine, who has taken the late oath prescribed to the Roman Catholics, who thereby have become sworn *cisalpines*. In like manner it would be more than indelicacy to suppose, that a Protestant clergyman now held the *jure divino* indefeasible hereditary right to the crown, although, as the bishop of Worcester observes, in the last century\*, “from the Homilies, the Institution of a Christian Man, and the general stream of writings in those days, it became the opinion of the church, and was indeed the received Protestant doctrine.”

This oath, by which the Roman Catholic body has lately renounced or disavowed any *temporal* power in the Pope, direct or indirect, appears not to differ in this point from the oath of James the First, which by the brief of Paul the Fifth in 1606, was declared “could not be admitted with the integrity of Catholic faith.” The reason why it then was condemned by the Pope was, as father Parsons assures us†, “Albeit divers parts thereof were lawful, to wit, all such clauses as appertayned to the promise of civil and temporal obedience; yet other things being interlaced and mixed therewith, which do detract from the spiritual authority of their said highest pastour (at least wise indirectly), the whole oath as it lyeth was thereby made un-

Father Parsons's opinion upon the unlawfulness of the oath of James the First.

\* Hurd's Dialogues, vol. ii. p. 303.

† Discussion of Mr. Barlowe's Answer, &c. p. 50.

“lawfull.



“lawfull. And this I understand to be the substance of the  
 “Pope’s resolution and answer, though all these particulars be  
 “not set down in his breves, but only the oath declared to be  
 “unlawfull in conscience to Catholicke men as it lyeth, without  
 “distinction.” Now nothing could render this oath unlawful in  
 conscience, but the conscientious obligation of *believing or observ-*  
*ing that, which by the oath the juror disavows or renounces.* But  
 father Parsons attributes the unlawfulness of the oath in question  
 to its denegation of the Pope’s *spiritual* power, which must be  
 equally submitted to now, as it was then by every person pro-  
 fessing the Roman Catholic religion: for by the fundamental  
 grounds of their religion, the rights, which are inherent in the  
 spiritual head of the church by divine institution, must remain  
 the same till the end of the world according to and by virtue  
 of the promises of Christ. It is not a matter of idle curiosity,  
 but of important consequence, to consider the terms of that oath,  
 which was declared by Paul the Fifth could “not be admitted  
 “with the integrity of Catholic faith;” and the terms of the  
 oath, which has been generally taken by the existing generation  
 of Roman Catholics in this realm. The whole oath of king  
 James the First concerns the power of the bishop of Rome  
 over the members of the Roman Catholic church, and is as  
 follows:

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Important  
 to consider  
 the terms of  
 the oath of  
 James the  
 First and that  
 of George  
 the Third.

“I *A. B.* do truly and sincerely acknowledge, profess, Oath of  
 “testify and declare in my conscience before God and the James the  
 “world, First.



BOOK I. " world, that our sovereign lord king James is lawful and right-  
 CHAP. IX. " ful king of this realm, and of all other his majesty's domi-  
 " nions and countries; and that the Pope, neither of himself nor  
 " by any authority of the Church or See of *Rome*, or by any  
 " other means with any other, hath any power or authority to  
 " depose the king, or to dispose any of his majesty's kingdoms  
 " or dominions, or to authorise any foreign prince to invade or  
 " annoy him or his countries, or to discharge any of his subjects  
 " of their allegiance and obedience to his majesty; or to give  
 " license or leave to any of them to bear arms, raise tumults, or  
 " to offer any violence or hurt to his majesty's royal person,  
 " state or government, or to any of his majesty's subjects,  
 " within his majesty's dominions.

" Also I do swear from my heart, that notwithstanding any  
 " declaration or sentence of excommunication or deprivation  
 " made or granted, or to be made or granted by the Pope or his  
 " successors, or by any authority derived or pretended to be de-  
 " rived from him or his See against the king, his heirs or suc-  
 " cessors, or any absolution of the said subjects from their obe-  
 " dience; I will bear faith and true allegiance to his majesty, his  
 " heirs and successors, and him and them will defend to the  
 " utmost of my power, against all conspiracies and attempts  
 " whatsoever, which shall be made against his or their persons,  
 " their crown and dignity, by reason or colour of any such  
 " sentence or declaration or otherwise, and will do my best  
 " endea-



“endeavour to disclose and make known unto his majesty, his  
“heirs and successors, all treasons and traitorous conspiracies,  
“which I shall know or hear of to be against him or any of  
“them.

“And I do further swear, that I do from my heart abhor, de-  
“test and abjure, as impious and heretical, this damnable  
“doctrine and position, That princes which be excommunicated  
“or deprived by the Pope may be deposed or murdered by  
“their subjects, or any other whatsoever.

“And I do believe, and in my conscience am resolved, that  
“neither the Pope nor any other person whatsoever hath  
“power to absolve me of this oath or any part thereof, which  
“I acknowledge by good and full authority to be lawfully  
“ministered unto me, and do renounce all pardons and dis-  
“pensations to the contrary.

“And all those things I do plainly and sincerely acknowledge  
“and swear, according to these express words by me spoken,  
“and according to the plain and common sense and under-  
“standing of the same words, without any equivocation or men-  
“tal evasion, or secret reservation whatsoever: And I do make  
“this recognition and acknowledgment heartily willingly and  
“truly, upon the true faith of a Christian.

“SO HELP ME GOD!!”

The



## BOOK I.

## CHAP. IX.

The late oath, by which the Roman Catholic body of British subjects have testified their belief upon the same subject, is in page 93.

Difference between the present Roman Catholic jurors and their non-juring ancestors.

Far be from me any attempt to revive the controversy about the lawfulness of taking either of these oaths: the fact of the whole British Roman Catholic clergy and laity having taken the last oath bespeaks their conviction, that it could *be admitted with the integrity of Catholic faith*. Yet have I been publicly and not very gently rebuked, for maintaining certain principles and opinions, which *cannot be admitted with the integrity of Catholic faith* as the very grounds, upon which alone I can reconcile to myself the lawfulness of taking this oath. It suffices not, that a liberal public should give us general credit for being sincere in taking this oath: but that same liberality frequently extends to a supposed variation of the existing generation of jurors from their non-juring ancestors: and few upon reflection will allow us the credit of sincerity upon any other than the ground of change in religious principles. Men who sacrifice every thing to their preference of a religion, which they maintain to be irreformable, in all its fundamental and necessary articles of faith, ought to repel such an imputation. The fact is simply this. The *religious* opinion involved in the subject of this oath relates to or affects the *primacy of honor and jurisdiction* of an universal bishop. In this we differ not from our forefathers at any time. But widely do we dissent from the general opi-  
nions



nions of our predecessors in this country during the two last centuries, who maintained that the spiritual supremacy of the church of Christ upon earth necessarily carried with it a degree of temporal or civil authority over all the potentates of the earth. Convinced of the falsity of these opinions, the existing body of Roman Catholics have generally taken the oath prescribed by the 30th of his present majesty. In this they closely approach the spirit and principle of their earlier ancestors during the three centuries immediately preceding the reformation, as I shall hereafter shew. Whoever maintains the doctrines holden by Bellarmine, Saunders, Parsons and the bulk of English Roman Catholic divines of the 16th century concerning the power of the Pope over states, princes and temporal concerns, is perjured by the taking of this oath. For how can the person who holds\*  
 “ that the Pope hath received from Christ *utrumque gladium,*  
 “ *temporalem et spiritualem,* both swords, that is *both temporal*  
 “ *and spiritual* authority, which he (Dr. Saunders) proveth by  
 “ many arguments and demonstrations, swear in the plain and  
 “ ordinary sense of the words, without any evasion equivocation  
 “ or mental reservation, that the Pope of Rome neither hath nor  
 “ ought to have any temporal or civil jurisdiction power  
 “ superiority or pre-eminence *directly* or *indirectly* within this  
 “ realm?” This oath is a formal renunciation of Dr. Saunders’s opinion: nor do I see the possibility of taking it under the re-

The opinions  
of Bellarmine  
&c. incom-  
patible with  
the oath of  
George III.

\* Discussion of Mr. Barlow’s Answer by Parsons, p. 77. Vid. also Bell. de Pont. l. vi. c. 4 and 6.

R

serve,



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serve, which Father Parsons charitably attributed to those few Roman Catholics, who took the oath of king James: for he was unwilling to believe, they meant thereby to renounce their faith; and yet he was of opinion, that no man could take it in the ordinary sense of the words with a safe conscience\*. “But concerning the general question, to deny simply and absolutely, that the Pope is supreme pastour of the Catholyke church, hath any authority left him by Christ, either directly or indirectly, with cause or without cause, in never so great a necessity or for never so great or public an utility of the Christian religion, to proceed against any prince whatsoever *temporally* for his restraint or amendment, or to permit other princes to do the same: this I suppose was never their meaning, that tooke the oath, for that they should thereby contradict the general consent of all Catholyke divines, and confesse that God’s providence for the conservation and preservation of his church and kingdom upon earth, had been defectuous, for that he should have left no lawful remedy for so great and excessive an evil, as that way might fall out. Wherefore for so much as some such moderate meaning must needs be presumed to have been in those, that tooke the oath for safeguard of their consciences,”

Parsons’s salvo inconsistent with the plain words of the oath.

&c. How any such *moderate meaning*, as this Divine terms it, can be presumed in the takers of the late oath, which the whole Roman Catholic body has taken, I cannot conceive. Whether we consider the *animus imponentis* or the intention of the juror,

\* Discussion, p. 88, 89.



it must ever be allowed, that the person who swears that " the BOOK I.  
 " Pope of Rome neither hath nor ought to have any temporal CHAP. IX.  
 " or civil jurisdiction power superiority or pre-eminence *directly*  
 " or *indirectly* within this realm," has in effect declared upon  
 his oath, that he does not believe, that Christ gave any *temporal*  
 power whatsoever to the chief pastor of his church over states  
 and worldly princes, and that therefore the Pope cannot nor  
 ought on any occasion, be it ever so pressing, to exercise  
 any *direct or indirect* power over the state of this realm against  
 the free consent of the community. Whoever believes this  
 doctrine of Parsons to make a part of the Roman Catholic creed  
 must necessarily believe him, who so formally renounces it, to be  
 an apostate from the Roman Catholic faith, as is self-evident.  
 And with fore humiliation do I admit, that the charitable salvo  
 of this worthy Divine has not only justified, but induced a ne-  
 cessity for superadding to the oath the degrading declaration  
 of our *swearing in the ordinary and obvious sense of the words of it.*  
 It can in reality be nothing short of downright prevarication  
 and perjury to renounce any *temporal and civil jurisdiction power*  
*superiority or pre-eminence in the Pope directly or indirectly within*  
*this realm,* and admit with Father Parsons that " Christ has given  
 " to the supreme pastor of his church authority directly or in-  
 " directly for the utility of the Christian religion to proceed  
 " temporally against any prince for his restraint or amendment,  
 " and to permit other princes to do the same."

Modern Ro-  
 man Catho-  
 lics have  
 sworn against  
 Parsons's doc-  
 trine.



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This absolute and unqualified independence of the State in *civil or temporal* matters is well and pointedly expressed in the preamble of the 25th of Henry VIII. c. 21\*. Mr. Manning †, although he severely reprehend the legislature *for making by this act the first change in the religion of our ancestors*, yet he fully admits of the truth of what is recited in that preamble, though it did not justify the enacting part of the statute, which in express

\* This your Grace's realm recognizing no superior under God, but only your Grace, hath been and is free from subjection to any man's laws, but only to such as have been devised, made and obtained within this realm, for the wealth of the same, or to such other as by sufferance of your Grace and your progenitors, the people of this your realm have taken at their free liberty, by their own consent to be used amongst them, and have bound themselves by long use and custom to the observance of the same, not as to the observance of laws of any foreign prince, potentate or prelate, but as to the custom and ancient laws of this realm originally established as the laws of the same by the said sufferance consent and custom and none otherwise. It standeth therefore with natural equity and good reason, that in all and every such laws *human* made within this realm or induced into this realm by the said sufferance consent and custom, your royal majesty and your spiritual and temporal lords and commons, representing the whole state of your realm, in this your most high court of parliament have full power and authority not only to dispense but also to authorise some elect person or persons to dispense with those, and all other human laws of this your realm, and with every one of them, as the quality of the persons and matter shall require; and also the said laws, and every of them, to abrogate, annul, amplify or diminish, as it shall be seen unto your majesty and the nobles and commons of your realm present in your parliament. C. 21.

† England's Conversion and Reformation compared, p. 186.

words



words to him appeared to transfer the *spiritual* power and jurisdiction from the church to the state. "For though some acts had  
 "passed in former reigns to put a stop to some abuses committed  
 "by the Pope's legates in England, as likewise to prevent any  
 "unreasonable encroachments of the court of Rome, because  
 "the most lawful and best established authority may be abused,  
 "yet the Pope's title to the *spiritual* supremacy over the univer-  
 "sal church had always been acknowledged by the whole body  
 "of the English nation as belonging to him by divine right, and  
 "inviolably maintained as an article of the christian faith. So  
 "far were our forefathers from entertaining any thoughts of  
 "placing the crown and mitre upon the same head, or autho-  
 "rizing the hand, that swayed the sceptre, to stretch itself forth  
 "to the center. This on the contrary was in all former ages  
 "regarded as a sacrilegious attempt and a violation of Christ's  
 "own institution, who never appointed kings but bishops to  
 "govern his church in spiritual matters." Of their govern-  
 ment I shall speak hereafter.

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 CHAP. IX.

Fair opinion  
 of Mr. Man-  
 ning upon the  
 spiritual and  
 temporal  
 power.

The existing Roman Catholics in dogmatical tenets and sub-  
 mission to church discipline differ not from their predecessors:  
 but they think and act differently upon political points, and  
 therefore expect to be treated differently by the state. Allen,  
 Parsons, and others of the same school, were either ignorant of or  
 inattentive to the rights, obligations and duties of the civil power;  
 they confounded it with the *spiritual* power, and their zeal for  
 the



BOOK I.  
CHAP. IX.

True character of Allen, Parsons, &c.

They could not have taken this oath.

the latter drove them into their errors about the former: it is unjust to calumniate these men as felons or malefactors; that was not their character; their religion was uppermost in their hearts, and they unadvisedly sanctioned all means, which in the heat of their zeal they thought likely to promote it. Such motives, whilst they purified the intention of the agents, redoubled the obligation of the State to prevent their effects by additional severity and rigor. The more respectable is the character of the broacher of error, the more will his doctrine gain ground and extend itself. It is demonstrable, that Allen and Parsons could not according to their principles take that oath, which the Roman Catholic body throughout the three kingdoms has lately taken, viz. "to maintain, support and defend to the utmost of their power the Protestant succession, to renounce and abjure all temporal authority in the Pope over sovereigns and states;" consequently to forswear "the deposing doctrine on account of any excommunication or dispensation from the See of Rome." The bulk of the present Roman Catholics have by oath renounced all these doctrines; I am therefore bounden to look upon them as differing in all these matters from Allen, Parsons and others, whose *ultramontane* principles were directly those, which we have by oath renounced. With equal astonishment and mortification then do I find myself censured for supporting the reverse of those doctrines, which characterised Allen's and Parsons's zeal in maintaining the deposing and other *temporal* powers in the See of Rome.

So



So far indeed am I from pleading guilty to the charge of heterodoxy for approving the principles of the revolution, that on the contrary, I maintain that the taking of the oath required by the 30th of his present Majesty necessarily implies the full adoption of every principle, which can be called a revolution principle, not, as I said in my *Jura Anglorum*, so called because they were formed by the revolution, but because the revolution was effected by them.

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No Roman Catholic can lawfully swear to do his utmost to maintain, support and defend a succession which secludes the ancient hereditary line from the throne, which limits a new one, and renders the person even in the new line incapable of holding it, who professes the Roman Catholic religion, or marries a Papist, unless he have previously renounced the divine hereditary indefeasible right to the throne, unless he admit of a right in the people to alter and form their own government, unless he allow the freedom of conscience (as against the community), and that the truth of religion is in no manner involved in the civil establishment, which it receives from the state, unless he be convinced, that the trust reposed in the legislators by their constituents obliges them to preserve the peace welfare and safety of the community by providing for the majority of their constituents the means of practising that religion, which they can neither force upon them nor prevent them from believing: in a word,

Pre-supposed  
and avowed  
opinions of  
all that take  
the present  
oath.



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CHAP. IX.

word, unless he have first brought his mind to this conviction, that the profession of the true faith gives a man no title in this life either to property or power, and that the open practice of it may in certain cases, for the welfare of the State, be made a lawful ground for depriving him of both. No Roman Catholic can swear, that it is unlawful to murder a man on pretence of his being a heretic or infidel, or that faith is not to be kept with such, or that the Pope or any spiritual power can by excommunication or otherwise depose princes, or that, being so excommunicated, they may be murdered or destroyed, or that subjects can in any way be released by such spiritual power from their allegiance, or that the Pope or other prince or state has any civil or temporal power directly or indirectly within this realm, unless such Roman Catholic have previously allowed, that the religious opinions of individuals are not of the competency of the *civil* power of the State, unless he believe, that the civil and spiritual power are essentially independent of each other, and that the spiritual power cannot of its own nature, *ex vi sua*, produce any *civil* effect; unless, in a word, he believe, that no temporal object can be within the jurisdiction or competency of the spiritual power. But of these two last articles I shall have occasion to speak more fully hereafter.

It is singular, that my Reverend Correspondent should so peremptorily declare it unlawful for a Roman Catholic to cherish and support the revolution in its consequences and effects.

The



The consequences and effects of the revolution are the continuance of the *Protestant* succession as established by the Act of Settlement; and without going into the nicety of theological disquisition, or any legal subtilty, it will be readily admitted by every man of plain sense and dealing, that the man, who swears to "maintain, support and defend to the utmost of his power "the Protestant succession as settled by the Act of Settlement," does as much rather more than the man, who barely cherishes and supports the revolution in its consequences and effects. What is meant by the revolution is the new government of William and Mary established upon the annihilation and destruction of that of king James: and what else was this new government but a new line of succession, qualified with the condition of *Protestantism*?

Every juror bounden by his oath to cherish and support the effects of the revolution.

How little therefore is he authorised to call it a "base and "unbecoming sentiment (p. 115) to cherish and give approbation to this high act of power with its consequences and effects," when a man has sworn to maintain, support and defend this very *high act of power* to his utmost? It was absurd and ignorant in him to pretend to say, "that by this high act of power the Catholic religion was proscribed;" for the religion of the king is neither a proscription, toleration nor an establishment of any other religion. At present the Roman Catholic religion is tole-

S

rated



**BOOK I.** rated in England and Ireland, the Presbyterian religion is esta-  
**CHAP. IX.** blished in Scotland, and the Roman Catholic religion in Canada,  
 though the king be according to the condition of the Act of  
 Settlement an Episcopalian Protestant.

END OF THE FIRST BOOK.



AN  
ENQUIRY

INTO

THE ORIGIN OF  
ECCLESIASTICAL AND CIVIL AUTHORITY.

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BOOK II.

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CHAP. I.

INTRODUCTION TO THE ENQUIRY INTO SPIRITUAL  
POWER.

*Various Imports of the Words Christian, Church, Spiritual, Ecclesiastical, Human, Temporal. Definition of Spiritual Power. Spiritual and Temporal Superiors both Vicegerents of God for different Purposes.*

IN this Christian nation, where neither atheism nor deism receives open countenance, I may presume upon the general belief of my readers, that Jesus Christ came upon earth to abolish the Jewish legislation and to found upon it the more perfect system of grace, which is the revealed law of Christianity taught

BOOK II.  
CHAP. I.

General belief in this country of the existence of a Christian church.



## BOOK II.

## CHAP. I.

How far submission to the *spiritual* affects the compliance with the obligations of the *civil* power.

taught and supported by the visible church of Christ upon earth, which we are assured by the scriptures *is* now existing, and *will* continue to exist till the last accounting day. In seeking therefore the origin of the *spiritual* power or authority, which every Christian must obey, we search in fact to ascertain the nature and extent of our obligation of submitting unto it. This is a practical duty, which every Christian is bounden to perform: and it may not be thought foreign from the province of a lawyer to examine and discuss the effects, which the performance of this duty may produce upon the compliance of individuals with their *social* and *civil* obligations to the State. I shall feel a peculiar satisfaction if in my researches, I shall have the happiness to find, that the Protestant doctrines upon these points vary not from our own. I speak under the correction of the divines of all churches, solemnly disavowing any intention to mis-state the doctrines of any. I mean to treat religious opinions *historically*, not *polemically*.

Various imports of the words *religion*,

As my Theological Correspondent has allowed me no sort of latitude in the acceptation or application of the most ordinary terms, I shall endeavour to prevent future objections by some previous explanation of such terms, as I shall hereafter use. I therefore claim the right of being differently understood, when I use the word *religion*, as the general sense of man's duty to a Being superior to himself, and as the belief of that specific system or form of religion, which God requires to be adopted. The word  
*christian*



*christian* sometimes extends indiscriminately to all believers in Christ in contradistinction to infidels or unbelievers; sometimes it includes only such as have received christian baptism; as the word *christian* was applicable to the Emperor Constantine in a different manner before and after he had received that sacrament: at other times it may be narrowed to apply to those only, who believe in purity and entirety whatever Christ taught upon earth. So the word *church* sometimes comprehends all those, who by *christian* baptism are admitted into it: it then includes all *heretics* and *schismatics* properly so called: and it may at other times be so used, as to exclude them, as also persons excommunicated: it frequently expresses the state or order of the clergy; and often imports the national and geographical divisions of the different parts of the church of Christ. Upon the same principle do the words *spiritual* and *ecclesiastical* vary in their sense and import, as they are applied or have reference to the church. Thus the words *human* and *temporal* are applied to right, power or authority, to denote, that the principle and the effect of the action proceed *immediately* from man and *mediately* only from God: and at other times they are used almost as synonymous with the words *natural* or *physical*; and then they import the actual existence of the right power or authority in this world: and they are frequently put into direct antithesis to the words *divine* and *spiritual*.

BOOK II.

CHAP. I.

*Christian,**Church,**Spiritual and  
ecclesiastical,**Human and  
temporal,*

To apply those observations immediately to the subject under  
my



## BOOK II.

## CHAP. I.

*Spiritual or  
ecclesiastical  
authority.*

my present consideration, I say, that by *spiritual* or *ecclesiastical* authority power or right, I mean that, which was given *immediately* by God to man, and which though continued by transfer from one man to another, is only communicable by and through such persons, as have received it in an uninterrupted succession from those, to whom God originally granted it, and by the means particularly directed by God himself. In a word it is that authority, which Christ gave to his apostles, and which has ever since been continued through their successors to the governors of the church, which he founded upon earth.

*Difference  
between spi-  
ritual and tem-  
poral power.*

*Vicegerents of  
God.*

As the community cannot give such authority right or power, so neither can they alter encrease abridge repeal or annul it. In this the two powers or authorities differ from each other. They both originate from God and consequently command our submission. For this reason those, who hold or are possessed of either, are often said to be the *vicegerents* of God; and they are so for these two special purposes: the *spiritual* superior is the *vicegerent* of God to execute his immediate commands or spiritual laws, which he has decreed shall never be changed by man: the *temporal* superior is the *vicegerent* of God to execute those *civil* laws, the formation alteration and repeal of which he has left to the discretion of man. These laws by their nature essentially variable are necessary for keeping up and forwarding the general dispensation of God's providence in maintaining civil government as essential to society, for which he framed mankind.

Before



Before I enter minutely into the nature of that *spiritual* or *ecclesiastical*\* authority, which was given by Christ to the rulers of his church, I think it adviseable to make some observations upon the *spiritual* authority, which subsisted in the world before christianity; for it appears to me, that the general misconceptions of the *civil* and *spiritual* authority, have greatly originated from an inconsiderate confusion of the theocracy of the Jews with the establishment of the reign of Christ in the Christian legislation. In order to establish this difference with the more effect, I will consider separately the theocracy of the Jews.

\* The word *ecclesiastical* I can scarcely admit to be synonymous with that of *spiritual*; however as divines have not adopted a difference between them when applied to power or authority, I shall in deference to them speak of the *spiritual* or *ecclesiastical* power as synonymous.



## C H A P. II.

## OF THE THEOCRACY OF THE JEWS.

*God legislated immediately for them. Their Spiritual and Civil Government inseparable. Their Natural Right of framing a Government suspended or annihilated during the Theocracy.*

BOOK II. WHETHER in the law of nature, before the divine legislation  
 CHAP. II. to Moses, there were any *spiritual* authority, to which man owed submission separate from the *civil* and *temporal* authority, which always subsisted on earth from the first formation of government, will be needless in my present pursuit to enquire. The only reason, which induces me to take into my consideration the establishment of the Jewish theocracy, is to point out its difference from the establishment of Christianity, which created that *spiritual* power or authority, to which as Christians we owe obedience and submission: particularly so, as my Reverend Correspondent has filled many pages of his book, viz. from p. 77 to p. 100, with the examples of Solomon, Jeroboam, &c. to prove, as he says, the falsity of Dr. Rogers's assertion, that "no man can be credited, who pretends to a special mission from God for opposing the civil magistrate to establish any religion at all." Had Dr. Rogers expressly admitted, that there was no power in the *civil* magistrate to give a *civil* sanction or establishment

Examples of  
 the Jewish  
 magistrates  
 inapplicable  
 to Christian-  
 ity.



establishment, to any religion, whether true or false, his proposition would have been as false, as if he had said, that the *civil* magistrate could ascertain the truth of a religion by giving it a *civil* sanction or establishment.

BOOK II.

CHAP. II.

By the term *theocracy* I mean a government established and immediately superintended by God: and the very import of the term is a full explanation of the difference there is between a *civil* or *temporal* and a *theocratical* government, such as was that of the Jews. In this God condescends to direct, order and superintend immediately: in that he leaves the direction order and superintendence to the community: but he does not require of man a more strict obedience or submission to the one, than to the other. The one admits of no possible change by the community, whilst God continues the theocracy: the other obliges as strongly to all changes and repeals, as to the first institutions of the laws made by the community. I enter not into the reasons, why God in the particular instance of the Jewish nation, deviated from the ordinary and general dispensation of his providence over the human species, by selecting this people from all the nations of the earth, and legislating and appointing rulers for them exclusively\*.

In what a  
theocracy  
consists.

\* Frequent applications of the Old to the New Testament without proper discrimination are very injurious to policy and truth. Where God immediately appointed the king, he might properly be called the Lord's anointed: as it was said in 1 Samuel, "Who can stretch forth his hand against the Lord's anointed" and be innocent or guiltless?" I have never heard of a modern sovereign immediately appointed king by God like Saul.

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It



## BOOK II.

## CHAP. II.

Inspiration  
of the Old  
Testament.

Alliance  
of the religion  
and state of  
the Jews.

It might insult some of my readers to offer proofs of the historical facts recounted in the Old Testament. We find in these books, which are allowed by all Christians to have been inspired to the sacred penman, that without any consent or privity of the people, God established both their civil government and religion at one and the same time and by the same means: so that as long as this theocracy should last, so long the indissoluble union or alliance between their religion and their state would last also. Whatever alterations in their civil government were at any time introduced, could not be effected by the people, but by the fresh intermediation of God in an immediate and properly speaking a miraculous manner. They were called God's people, not only because they believed in him and served him, but because they were ruled by his particular law, which was a favor that he granted to no other community on the face of the earth. From the greatest to the most trivial circumstance in their religion and in their state was every thing written by inspiration of the immediate author of their theocracy: every thing was disposed by God's peculiar order, so that the same could not be put in practice but in a free and independent nation: and therefore the Jews could not without overturning their religion alter their civil government, or incorporate with or submit to a foreign State; consequently the overthrow of their civil government was the immediate forerunner of the abolishment of their religion: in a word, there was amongst them no legislative authority, God having done that for them, which  
he



he had left to the rest of mankind to do for themselves: their kings, or judges, or rulers, had no other commission than to execute the law of God amongst his people; they could neither add to nor diminish, alter nor abrogate the law: the administration of the religious worship (or the priesthood) was committed to one particular tribe, to whom by God's special command no lands were allotted, as to the other tribes, but they were to be maintained by the tenths (tythes) or other revenues out of the other tribes: so that the Jewish theocracy clearly comprised not only *spiritual* but also *temporal* objects, such as land and riches. The very place of worship was fixed upon by God, and he appointed not only the person, who should build the temple, but gave the most minute directions about every particular part of it, from the general form and dimension of the whole edifice to the measure of every particular chamber, and the weight of a flesh hook; the materials and form of every vessel and utensil of the tabernacle, the pattern and fashion of Aaron and his son's garments and ornaments were shown and directed by God; nothing was left to the discretion of architects, builders, governors, rulers or priests.

The Jewish  
law *civil* and  
*spiritual*.

As the whole system of the Mosaic dispensation was intended by God as a figure or prototype of the Law of Grace, which he intended in the hour of his greatest goodness to man to establish in his sacred person upon earth, so could not the mere discretionary and fortuitous actions of man have prefigured the different symbols of the mysteries of the incarnation; for this

The Jewish  
dispensation a  
prototype of  
Christianity.



## BOOK II.

## CHAP. II.

the immediate interference and direction of God were necessary : he regulated its duration, in order to fulfil all the prophecies concerning his coming, and to afford *human* as well as *divine* proofs of their accomplishment : he chose a particular people from whose royal stock he was to descend according to the flesh, to be as it were the depositories of the sacred records, which were to testify and prove his coming unto the end of time. We see that amongst the Jews, their religion, their ceremonies, their laws, their customs, their rulers, their priests, their maintenance, their temple, their taxes, their payments, all were specially and immediately directed and ordained by God himself ; neither the whole nor any part of the community had power or authority to make the least alteration in them by way of reform, improvement, addition, diminution or repeal. The natural or rather social rights of the Jews to form their own government were annihilated or suspended by this special favor of God in legislating for them ; consequently no sort of parity, precedent or example can be drawn from the actions of the kings, priests and rulers of the Jews, to prove or establish any right, power or authority *spiritual* or *temporal* subsisting in man since the abolition of that theocracy and the cessation of God's immediate interference with any temporal government. In no part therefore of the Old Testament do we find any thing like an express injunction to the Jews of obeying their *temporal* rulers, superiors or sovereigns, as we do in the New : for as God had legislated for them, there was no legislative power existing in the nation :

The community had no power over the Jewish laws.



tion: the *civil* magistrate therefore had no discretionary right or power of commanding, as he has in all other communities,

BOOK II.  
CHAP. II.

To shew more emphatically, that this theocracy was connected with and involved *temporal* or *civil* as well as *religious* or *spiritual* objects, it is to be remarked, that God annexed to the observance of it the express condition of their quiet possession of the country, in which they were then settled: the temporal prosperity of their state was to depend upon their fidelity in observing their religion; and the *civil* magistrates were by the law commanded to take cognizance of all matters, that could prove either dangerous to or destructive of their religion, as will clearly appear by an attentive revival or recollection of the books of Moses.

Temporal rewards promised to the Jews for the observance of their law.

Instead of all the temporal promises and corporeal punishments for the observance or violation of the old law under the theocracy, our blessed Redeemer, as we shall state more particularly hereafter, makes this declaration to the followers of the new law, which is directly the reverse: "He that believeth shall be saved, and he that believeth not shall be damned." Now as salvation and damnation are out of the power of the *civil magistrate*, it is evident that Christianity gave him no power over men either to reward their observance or to punish their neglect of the revealed law of Christ. St. Paul in writing to the Hebrews very explicitly sets forth this difference between the punishments

Different duties of the civil magistrate concerning the observance of the Jewish and Christian law.



BOOK II. for the violation of the law of Moses and the law of Grace. The  
 CHAP. II. first was to be inflicted by the *civil* magistrate, and therefore he  
 had full cognizance and power over the individuals, who were  
 obliged to observe it, (Heb. x. 28.) “A man making void the  
 “law of Moses dieth without mercy under two or three wit-  
 “nesses.” But as God reserved to himself the punishment of  
 the latter in a manner, which could not be executed by the *civil*  
 magistrate, it consequently follows, that his duty and power ex-  
 tend not to that object (29, 30, 31.) “How much more do you  
 “think he deserveth worse punishment, who hath trodden under  
 “foot the Son of God, and hath esteemed the blood of the tes-  
 “tament unclean, with which he was sanctified, and hath of-  
 “fered an affront to the Spirit of Grace: for we know him who  
 “hath said; Revenge belongeth to me and I will repay. And  
 “again, the Lord shall judge his people: it is a dreadful thing  
 “to fall into the hands of the living God.”

We see here distinctly, that although the offence of violating  
 the law of the Gospel be more heinous, than the breach of the  
 law of Moses, yet the punishments, which God inflicts are totally  
 of a different nature; the one is *temporal*, to be executed by the  
*civil* magistrate, the other eternal, reserved to the Deity himself.  
 It is thus not only clear from the authority of Holy Writ, that  
 the power of the *civil* magistrate extends not to the observance  
 or neglect of the Christian religion: but to shew more palpably,  
 the difference between the law of Moses and the law of Christ,  
 and



and consequently how inapplicable all precedents of the one are to the other, we may reflect, that some things, which were strictly enjoined to every Jew under the theocracy, cannot be performed by any person under the gospel without sin. Whoever tempted another to idolatry was not to be concealed, but the person tempted was obliged to kill him himself, whether he were his brother, son, wife, friend or relative, (Deut. xiii. 9, 10.) "But thou shalt presently put him to death: let thy hand be first upon him and then the hand of all the people. With stones shall he be stoned to death." Hence the important inference is to be drawn, that neither before nor since, nor out of the Jewish theocracy, was the cognizance, superintendence or care of religion committed to the *civil* magistrate, as it was in the Mosaic dispensation.

BOOK II.  
CHAP. II.



## C H A P. III.

## OF THE ESTABLISHMENT OF CHRISTIANITY WITH REFERENCE TO THE STATE.

*The Law of Christianity universal and unlimited. Christians one by Baptism. Spiritual Power well defined by Parsons. Christianity for the Three First Centuries without any Civil Establishment. Christ assumed no Jurisdiction over Temporal Objects. The Kingdom of Truth or of Christ neither Temporal by Nature or Derivation.*

BOOK II.  
CHAP. III.

ALL Christians, who believe that Jesus Christ came upon earth in the form of man to establish what we call the *Law of Grace*, or the System of Christianity, necessarily believe, that the old Jewish law was also established by God by way of a preparation for and a figure or prototype of the new law: that the old law was not intended for all mankind generally, as it could only be observed and indeed was obligatory only upon the Jewish nation, and in many instances, whilst the individual was resident within Judea and the country subject to the law of Moses\*: whereas the

\* The law in Deuteronomy, by which an Israelite was enjoined to slay any person that tempted or invited him to commit idolatry, it is presumed would not oblige or bind him, whilst he resided in an idolatrous nation; God surely would not oblige one to murder an Egyptian or Grecian, that might invite a Jewish stranger to attend their idolatrous worship.



new law was intended for all mankind unexceptionably, and therefore depended upon no particular people or form of government: it was not more appropriate or applicable to one than to another. Wherefore when the apostles were sent by Christ to found and build the church, their commission was, "Go and teach *all nations*, baptizing them in the name of the Father and of the Son and of the Holy Ghost." (Mat. xxviii. 29.) Every person thus baptized became a member of Christ's church without any distinction of Jew Roman Parthian or Grecian. The whole collection of persons so baptized and believing in Christ constitutes the society of Christians, which we properly call the Church of Christ.

The qualification, character, duties and obligations contracted or imposed by *Christian* baptism are precisely the same in common with every individual member of the society congregation or church of Christ, without any respect to their nation or form of civil government: and therefore all become thereby members of one body. Thus says the bishop of Chester \*, "Now as there is but one Lord and one faith, so also is there but one baptism: and consequently they which are admitted to it are one." This is minutely consonant with what my Reverend Correspondent himself professes, (p. 37.) "That he (speaking of a person baptized) received the habit of the true faith of Jesus Christ in baptism, you and I and theologians I be-

\* Peirson's Exposition of the Creed, Art. ix. p. 340.



BOOK II. "lieve of every description amongst Christians will readily  
 CHAP. III. "allow. And, if then this man received the genuine Catholic  
 Baptism makes a Christian. "faith in baptism, not having wilfully erred against such faith, he  
 "undoubtedly is and to all intents and purposes remains before  
 "God as much a real Catholic as he was on the day of his  
 "baptism." I make these quotations to justify the general sense,  
 in which I speak of the church of Christ\*.

What the  
 church is.

The *church* of Christ being the aggregate selection congregation or society of baptized persons called Christians, is properly speaking a corporation body or community of human individuals made *one* by Christian baptism, who by the conditions and terms of that sacrament, voluntarily accepted by adults, and by infants through their sponsors, become subject to the authority power or jurisdiction, under and by virtue of which the corporation or body itself was instituted and subsists, and this I call *spiritual or divine* †: "which jurisdiction Christ also himself  
 "God and man did exercise in person upon earth, wholie separated from the use of all temporal jurisdiction notwithstanding he was Lord of all, as the same divines out of the gospel  
 "do prove. Shewing thereby and by the long continuance  
 "of his church, without the said temporal authority, that spiritual jurisdiction is wholly independent thereof, and utterly

\* The reader will indulge and forgive my redundant caution after having been so frequently and grossly misrepresented.

† Parsons' Answer to Coke, p. 26.

"distinct



“ distinct by her own nature. And albeit civil power or jurif-  
 “ diction be of God’s institution also and duly to be honoured  
 “ in his Church and Christian commonwealths, yet is the same  
 “ far otherwise derived and received from God than is spiritual  
 “ power: that is to say, not immediately by God’s own deli-  
 “ very thereof, but mediately rather, viz. by mediation of the  
 “ law of nature and nations. Wherein is to be noted, that the  
 “ ordination of God by the law of nature, doth give political  
 “ power unto the multitude immediately and by them mediately  
 “ to one or more. But spiritual power Christ gave immediately  
 “ and by himself to the apostles and their successors.”

BOOK II.

CHAP. III.

Spiritual and  
 temporal  
 power diffe-  
 rently derived  
 from God.

The Christian religion is tied to no particular place as was  
 the Jewish; nor is the ministry thereof granted as a privilege to  
 one particular nation or family. Each nation has an equal partici-  
 pation in all its benefits: none can claim a preference of right or  
 prerogative over others. “ There is neither Greek nor Jew, cir-  
 “ cumcision nor uncircumcision, Barbarian Scythian bond nor free:  
 “ but Christ is all and in all,” Col. iii. 11. To a candid observer  
 of events it appears to be not the least striking feature of God’s  
 providence over his church, that for the first three hundred  
 years it subsisted without the actual protection of any *civil*  
 power, or without any civil sanction or establishment or any sort  
 of alliance or incorporation with the state. As therefore during  
 this space of time, it received no *civil* establishment whatsoever;  
 it seems fair to conclude, that such establishment was neither ne-

Civil esta-  
 blishment of  
 the Christian  
 religion.



BOOK II.  
CHAP. III.

cessary for its institution, or continuance. Few will contend that the Christian religion was less perfect during the three first centuries after its institution, than it has been since that period. I will expose myself to no theological censure, by hazarding *my* opinion of the utility or advantages of the Christian religion being sanctioned and supported by the *civil* magistrate. But I am happy to find, that upon the effects of the civil establishment given to it by the first Christian emperor, a very respectable modern divine has very fairly and candidly avowed his sentiments\*. “It has ever been found in the history of God’s people, that in proportion as they have been indulged in the enjoyment of the good things of this world, they have become indifferent in regard to those, they have been taught to look for in the next. The most striking instance of this occurred at the time, when Constantine gave a settled peace and legal existence to the Christian religion, after three centuries of severe persecution and terrifying alarms. Not only morals and discipline became relaxed, but likewise schism and heresy, which before had only timidly shewn their heads in certain places, then stalked boldly abroad, attacked the church in every quarter, and seemed on the point of at once overwhelming her divine faith and constitution.”

Although it be a primary object of this work to discuss and

\* Divine Right of Episcopacy, p. 2. by the Rev. Mr. Milner of Winchester, Author of Ecclesiastical Democracy detected, and many other tracts.



ascertain the origin, nature and legal effects of the *civil* establishment of religion in this kingdom, yet is it not within my commission or province to examine, much less to determine, how far a *civil* establishment or sanction of the Christian religion tends to promote and preserve the purity of Christian faith and practice. A Divine from whom my Reverend Correspondent at least will not dissent, has delivered a very serious important and (in my feeble judgment) true opinion upon the *moral* effects of *civil* establishments of religion in general. I have no other comments to make upon it, than that for three hundred years the Christian religion had flourished without it, and experienced the most serious evils from its introduction. But I question not therefore the lawfulness and legality of making, and, in some instances, the prudence and propriety of continuing such establishments.

The scriptural accounts of the first propagation of the gospel are emphatically pointed, in marking its independence upon any and its aptitude to all *civil* governments, by collecting together into the first sheaf of the Christian harvest individuals of the most distant, discordant, disparate and hostile States, such as Jews, Greeks, Romans, Parthians, &c. But the example of our Divine Legislator himself is still a more striking lesson of the independence of his doctrines and laws upon any *civil* power or authority: he assumed or exercised none in his own person; and on no occasion did he call in aid of his mission the arm of the *civil*

Independence  
of Christian-  
ity.



BOOK II. *civil* magistrate. He did every thing in the reverse: he kept  
 CHAP. III. up the appearance and reality of poverty from the cradle to the cross: he humbled himself, washing the feet of his disciples: when the multitude would make him a *temporal* king, he absconded and made his escape: he would not execute the office of a judge, or administer *temporal* justice; he declined to arbitrate upon *civil* matters between individuals; he paid taxes to the Roman emperor, and permitted himself to be judged and executed by the executive government of Judea; all which things are contradictory to, inconsistent with, and exclusive of *temporal* sovereignty: he severely rebuked his disciples, who appeared surprised at his not using the powers (which they knew he possessed) of resistance against the unjust sentence of his death.

Objects of  
*spiritual*  
 power.

The miracles which Moses performed were calculated to remove a whole people out of a land of bondage and establish them in a land of promise, which were *temporal* objects: the miracles of Christ were calculated to impress the minds of men with general benevolence and charity; he went about doing good and healing all that were oppressed by the devil (Acts xvi. 38). No one act of his mission, jurisdiction or power, when upon earth, went to affect a single object of *civil* or *temporal* jurisdiction: he even chose rather to work a miracle, in order to provide himself with the means of paying the tax to the Roman Emperor, than to leave it to the judgment of men, by what title he



he could have acquired any *temporal* property. Indeed all the inspired writers appear anxious to impress us with the conviction, that as he possessed nothing in this world, so *temporal* possessions were no objects of his divine mission.

BOOK II.  
CHAP. III.

Thus did he commission his apostles to go about *tanquam nihil habentes sed omnia possidentes*. He never would permit external or forcible means to be used to promote or inculcate his doctrines: no aid of the civil magistrate was called upon, much less was any enjoined: "He that hath ears to hear, let him hear," (Luke viii. 8.) "For faith is from hearing," (Rom. x. 7.) Preaching was the only mean Christ used and commissioned his disciples to use: he neither employed, directed nor authorised any coercive power to compel submission: he allured men by no flattering prospects of a promised land or temporal prosperity: but he foretold to his followers, that they were to expect adversity and persecution in this world; though such as should not receive and follow his word, should meet with condign punishment; not in this life, but in the next. "He that believeth not, shall be condemned," (Mark xvi. 16.)

Means of  
establishing  
Christianity.

My Correspondent tells us (p. 58.) "That it is a prevailing notion amongst many Christians, because the concerns, in which they engage seem in their primary and direct view to be earthly and temporal, that therefore they are entirely exempt from the restraint and control of the spiritual jurisdiction"



BOOK II.  
CHAP. III.

dition of the church." Then for the eclaircissement of this important point, he undertakes to prove, what I believe no one ever denied, that the words of St. John, "My kingdom is "not of this world," really mean, that Christ's power and authority *were not from this world, originated not in earth, but came from heaven* (p. 59.) He very fairly draws the line of difference between the *spiritual power* as derived immediately from God, and the *temporal power* as derived from the people; for, says he, "it expresses a dependance upon or derivation from another, in the manner that Pilate's authority "was derived from Tiberius Cæsar, and Cæsar's own power "from the people." In interpreting these words of St. John, he has confined himself solely to the *derivation* of the power, upon which I believe there are not two opinions amongst Christians; but he is silent as to the nature of the power or kingdom so derived. To this his attention should have been directed in order to shew the false grounds, "upon which the upholders of "temporal power pretend to exclude from the concerns of this "world the spiritual interference and direction of the ministers "of Christ's church," (p. 59.)

Kingdom of  
Christ.

With submission to the Reverend Divine, I apprehend that the sacred text is fully as explicit in describing the nature, as it is in deducing the derivation of this power of the kingdom of Christ: for when Pilate observed, "that he then professed himself to be "a king," he answered, "that he was a king, but a king of  
" truth,



“ truth, and for this cause he came into the world that he should  
 “ bear witness unto truth,” (John xviii. 37.) Does not this  
 passage then of St. John most unequivocally and explicitly de-  
 monstrate, that there does exist in this world a *spiritual power*  
 or *kingdom of Christ*, which is not derived from any temporal  
 source, but comes immediately from God, and which has not for  
 its object any of those temporal things, which are the objects of  
 temporal sovereignties ?

BOOK II.  
 CHAP. III.

Our divine Lord said, that “ if his kingdom were of this  
 “ world,” (that is, either by its derivation or nature *temporal*)  
 “ his constituents would rise up in his defence,” (John xviii. 26.)  
 “ Νυν δε ἡ βασιλεία ἡ ἐμὴ οὐκ ἐστὶν ἐν τούτοις, but now my kingdom is  
 “ not from hence :” that is, it is neither *temporal* by derivation  
 nor by nature, for the one imports the other ; and the condi-  
 tional supposition of our Lord, Εἰ ἐκ τοῦ κόσμου τούτου ἦν ἡ βασιλεία  
 ἡ ἐμὴ, &c. “ If my kingdom were of this world,” is a conclusive  
 argument, that there are or may be kingdoms of this world,  
 ἐκ τοῦ κόσμου τούτου, ἐν τούτοις, *from hence*, or, in other words, which  
 receive their power from men or the people. And here lies the  
 grand difference between the two powers ; that which is  
 ἐν τούτοις or ἐκ τοῦ κόσμου τούτου is the *human* or *civil* or *temporal*  
 power : that which is not so, is the kingdom of truth, established  
 by Christ in person upon earth, and is the *spiritual* or *divine*  
 power.

Origin and  
 nature of  
 Christianity.



BOOK II.  
CHAP. III. The establishment of this kingdom of truth, of which our blessed Redeemer professed himself to be really the king, is that establishment of Christianity, which I have made the subject of this chapter, and which I hope clearly appears to my readers to be essentially separate and distinct from, and wholly independent of, any *temporal* or *civil* government or state whatever: it is a kingdom of truth, in which Christ by force of truth brings over our souls to his obedience, and therefore both by word and example taught us, that it was not to be supported by the same means of coercion and force, which are necessary to maintain *civil*, *human* or *temporal* governments, and keep their subjects in *civil* obedience. But as it is a kingdom, it must necessarily be supported by government; and what the nature of this government is, will be the subject of the ensuing chapter.



## C H A P. IV.

## OF CHURCH GOVERNMENT IN GENERAL.

*Universality of the Church of Christ. Governors and Governed. All Societies of Christians believe in the Establishment and Succession of Spiritual Power. Indefeasibility of the Church notwithstanding Heresies and Schisms. Nature of Holy Order. Nature of Spiritual Jurisdiction. Power of the Keys. Clergy and Laity. Difference between Order and Jurisdiction.*

WITHOUT offering to prove the existence of Christianity by any internal or external evidence, I shall take for granted the assumption, that Jesus Christ came upon earth to establish the Law of Grace, and that he has revealed to us many mysteries, which our weak understanding cannot comprehend: and I shall expect credit in asserting, that the reign of Christ or the kingdom of truth or system of Christianity, which was prefigured and preceded by the Jewish law, was not a transient temporary establishment, lasting only during the personal presence of Jesus Christ upon earth; but that it really was a government instituted in his person, and formed by him to last until the consummation of time. Thus, when St. Matthew had gone through the history of the establishment of the church of Christ upon earth, he closed

BOOK II.  
CHAP. IV.

Duration of  
the Christian  
church.



BOOK II. his evangelical account by these consolatory words: "And lo,  
CHAP. IV. "I am with you always unto the end of the world." I have before said, that the kingdom of Christ was essentially different from every *temporal, human or civil* government in its origin, nature and effects: but like all governments it requires *governors and governed*, and there must necessarily exist a difference between the *governors* and the *governed*.

Most things which I shall have occasion to say upon the general nature of church government, or the nature and power of spiritual authority, are (I presume) believed in common by the generality of the British empire: for although different societies of Christians hold different opinions about the degrees, dignities, offices, duties, rights, privileges, ordinations, institutions and succession of church governors, they generally agree in admitting a difference between the clergy and laity, and between the governors and governed: at least, they all admit the existence of *spiritual* power.

Governors  
and govern-  
ed in the  
Christian  
church.

In proceeding to discuss this delicate though important subject, I shall note, merely by way of elucidation, not of controversy, the few points of difference upon it which do, or which appear to subsist between the Established Church of England and the Church of Rome. I will not suppose, that there is in this country a sufficient number of *Erastians*, who place all *spiritual*



*tual* or *ecclesiastical* power or authority in the *civil* magistrate, to induce any one to refute their doctrine: it enters not within the scope of my views or intentions to attempt to controvert any *spiritual* or *religious* opinions, unless they evidently appear to clash with the *civil* duties of social man. The explanation of these alone is the professed object of my investigation.

BOOK II.  
CHAP. IV.

The first essential quality of the Christian doctrine and system is *universality* or *catholicity*: that, is it, is unexceptionably and equally applicable to every form of civil government, equally enforces submission and obedience to every *civil* magistrate, and is equally independent of his control or interference in all possible variations of *civil* governments: it is universally believed and submitted to by all the members of Christ's church, has been believed and submitted to at all times and upon all occasions, and will continue to be believed and submitted to by them until the end of the world. The adoption of the faith of Christ imports the necessity of submission to the governors of his church, such as he constituted them. For either we must suppose, that Christ was deficient in revealing all that concerned the government of his gospel church, which his Father sent him to establish, or else that the nature and form of that government should be left to the essentially variable discretion and judgment of the *civil* magistrate. To urge the first, would border upon blasphemy: to assert the second, would be to deny to the Christian church its primary quality of *catholicity*. It would more-

Catholicity  
of the Christian system.

over



BOOK II. over render every part of the New Testament, which lies in  
 CHAP. IV. precept and precedent about the rule of the church, and what  
 was preached and commanded by the apostles, of no use  
 or obligation upon us further than the *civil* magistrate pleases  
 or thinks proper. This would give to the *civil magistrate* a full  
 and uncontrolled dominion or power over the New Testament  
 and the whole system of the revealed doctrines of Christ. But  
 I will not for one moment presume, that Erasmus has any fol-  
 lowers in this country.

Rights and  
 duties of  
 church go-  
 vernors.

For the clearer elucidation of this matter we will first consider  
 who these governors are ; secondly, how they are constituted ; and  
 thirdly, in what things they have a right to command, and the  
 governed are under an obligation to obey. I shall not attempt  
 to prove what is denied by none, but to explain what scarcely  
 appears to me to have been rightly conceived or faithfully re-  
 presented by any writer upon the subject, that has fallen in my  
 way. I speak under correction, and again repeat my intention  
 of ascertaining the *civil* duties of those, who live under the  
 British constitution ; for this, like every other *civil* institution  
 framed by man, is separate and distinct from the gospel establish-  
 ment : though the profession and practice of any particular system  
 of Christianity cannot by its nature be inconsistent or incompati-  
 ble with the full perfection of the British constitution.

Every believing Christian admits, that when our blessed Lord  
 ascended



ascended into heaven, he had completed the mission, for which he was sent by his heavenly Father upon earth: this was the establishment of his *kingdom of truth*, or, in other words, declaring his law and establishing the government of his church. It would be little short of blasphemy to say, that Christ had not fully taught his whole law to his apostles, who were to propagate it through all nations, or that he had not given to them all the rights powers and authority, which were requisite to support and perpetuate the government of his church; for in such a supposition the end of his divine mission would not have been completely answered. As the church therefore cannot add to the law of Christ, or make or impose any new article of belief or divine faith, which Christ did not teach, so can she not acquire enjoy or exercise any right power or authority, which were not originally given by Christ to his apostles. "All things whatsoever I have heard from my Father, I have made known to you," said our blessed Redeemer to his apostles (John xv. 15). Then to shew that the mission, which Christ had himself received from his Father, was the very same as what he transmitted to his apostles, he said (John xx. 21.) "As my Father sent me, so I send you." As was the foundation, so is the continuation of Christianity the work of God: "Lo I am with you even unto the end of the world." It had its perfection from the beginning\*: unlike to human inventions.

Apostolical  
mission.

\* Vide Fleury's Discourse upon the Ecclesiastical History of the First Six Hundred Years.



BOOK II.

CHAP. IV.

and institutions, which have their progress decay and fall, the work of God can neither acquire improvement extension or stability by time, nor from any human source cause or circumstance. The sum total of a Christian's belief is confined to that, which Christ actually taught, for this is what is meant by the Christian revelation, and his obedience is required only to that power or authority, which he actually gave to his apostles. Although particular societies of Christians have believed differently at different times upon some of these revealed points, which were taught by our blessed Lord; yet none have ever differed upon this universal central and fundamental maxim of Christianity, that no faith can be *true*, no spiritual power *real*, but that, which Christ taught and delivered to his apostles, and *which through them and their successors has been transmitted down to us*. Christians may differ about the quality efficacy and consequences, or about the mode and means of the transmission of this *power*: but they all agree, that it has been actually transmitted, and now exists in the church of Christ. I only address myself therefore to those, who do believe it.

“Those which are believers, are the church: and therefore if they do believe, they must believe there is a church, of perpetual and indefectible existence by virtue of the promises of Christ\*,” &c. This assemblage or collection of believers is what is meant by the church of Christ in the acceptation of almost every description of Christians. The disputed point of

What meant  
by the church.

\* Pearson Bishop of Chester's Exposition of the Creed, p. 343.



difference amongst them is, who truly and fully believe every article of revelation in genuine purity. This immediately introduces matter of controversy, which I avoid as foreign from the intent of this inquiry. I assume it therefore as a *postulatum*, that the *spiritual* power, which exists in the church of Christ, conscientiously binds all those Christians, who voluntarily adopt and obstinately adhere to error in matters of divine faith, or who through pride and obstinacy withdraw from the governors of Christ's church. Those only are exempt from the authority of the church, who never were admitted into it.

Having said, that there are in the church of Christ, *governors and governed*, it follows, that this church must consist of a *visible*\* society community or collection of individuals: and this I take to be the general common doctrine of every society of Christians known within the British empire: yet however rightly they may severally believe, that coercion or compulsion in religious matters is an encroachment and usurpation upon the conscience, they concur in holding, that through the frailty and corruption of man there may be some perverse children of the church, who, though really members of that mystical body, may prove traitors and rebels, by voluntarily and obstinately adhering to false doctrines concerning the faith, which Christ taught in fulness and purity, and they are termed *heretics*, or by ob-

Heretics and  
schismatics.

\* "The general or outward Church of God is visible and may be seen," says Bishop Jewell, Defence of the Apologie for the Church of England 1571, p. 428.



BOOK II. stinately withdrawing themselves from the government of  
 CHAP. IV. Christ's church, which is in fact separating from its unity, and  
 they are termed *schismatics*. Yet notwithstanding such defect  
 or falling off or rebellion or separation of individual members  
 or even of particular churches, still the promise of Christ en-  
 sures the perpetual existence and indefectibility of his church.  
 All Christians therefore, who by their creed avow, that they be-  
 lieve in the *holy catholic church*, believe alike as to its unity and  
 indefectibility. "This article of the creed," says Bishop Pearson  
 (p. 342.) "is a proper object of faith, because it is grounded  
 "only upon the promise of God: there can be no other assu-  
 "rance of the perpetuity of this church, but what we have  
 "from him that built it. The church is not of such a nature  
 "as would necessarily once begun preserve itself for ever. And  
 "though the providence of God doth suffer many particular  
 "churches to cease, yet the promise of the same God will ne-  
 "ver permit that all of them shall at once perish. When Christ  
 "first spake to St. Peter, he sealed his speech with a powerful  
 "promise of perpetuity, saying, Thou art Peter, and upon this  
 "rock will I build my church, and the gates of hell shall not  
 "prevail against it." And Mr. Thorndyke expressly says\*,  
 "Since the principles of Christianity profess one church, and  
 "that the unity thereof extendeth to this visible communion, it  
 "is manifest hereby, that the will of God is, that all Christians

Indefectibi-  
 lity of the  
 church.

Unity of the  
 church.

\* Of the Right of a Christian Church in a Christian State, p. 6.

"should



" should concur in all ordinances of its service, when occasion  
 " requires, a thing which the practice of all sides confesses. BOOK II.  
CHAP. IV.  
 " For though this communion be interrupted with so many  
 " schisms, yet since all parties labour to shew, that the cause of  
 " separation is not on their side, they acknowledge all separa-  
 " tion to be against God's ordinance, when they labour to clear  
 " themselves of the blame of it." These doctrines necessarily  
 import, that there now are, and ever have been, and ever will be  
 persons in the church of Christ, who have a power and autho-  
 rity to govern and rule others, and that this power has been Uninterrupted  
succession  
of ministers.  
 derived to them through an uninterrupted succession from the  
 apostles.

I am aware, that in the last and at the beginning of the pre-  
 sent century, very grave Divines of the Church of England  
 maintained, that an uninterrupted succession of regular ordainers  
 was not necessary to the true being of the apostolical ministry.  
 This point of controversy may affect the mode of transmission  
 or derivation, but brings not into question the necessary and  
 actual existence of *spiritual* jurisdiction or church government.  
 I should not indeed hold myself justified in supposing, that any  
 of my Christian countrymen doubted of the existence or ne-  
 cessity of some governors or spiritual ministers of the gospel in  
 the church of Christ. I only address myself to those, who admit,  
 that the church which Christ established now actually and visibly



BOOK II.  
CHAP. IV.

exists upon earth: and of this church St. Paul spoke, when he said (1 Cor. xii. 28.) "God hath set some in the church, first "apostles, secondly prophets, thirdly teachers," &c. And since there can be no right to command rule or govern, where there is not an obligation to submit and obey, I shall also presume, that the generality of my countrymen understand the words of St. Peter to the Hebrews (xiii. 17.) as spoken of *church governors*, and not of the civil magistrate. "Obey them that have "the rule over you, and submit yourselves, for they watch for "your souls, as they that must give account \*."

Before I enter particularly into the quality and specific authority

\* The Greek text, τοῖς ἡγούμενοις ὑμῶν seems fairly translated in the Latin Vulgate *præpositis vestris*; the English version, of *them that have the rule over you*, appears fairer than the Rhemish, which renders it *your prelates*. The common accepted term *prelate* in English is limited and confined to the *episcopal* order, which neither the Greek nor the Latin text can in this place warrant. The duty and office of *watching over souls* ἀργυπνεῖν ὑπὸ τῶν ψυχῶν, and the responsibility for them, or the *giving or rendering an account* ὡς λόγον ἀποδῶσοντες, viz. to God, are the characteristic marks of persons invested with *spiritual* or *ecclesiastical* power or authority, of whatever rank or order they be. My professed intention and aim is to prove, that the soul or conscience is the exclusive object of *spiritual* power, and that it is immediately derived from God; and therefore is the account of the use of the power to be rendered to him, who gave it. The unequivocal admission of *spiritual* or *ecclesiastical* power in the church was as expressly made by the divines attending the parliamentary commissioners at the treaty of  
Newport



rity of the governors of Christ's church, it will be proper to rectify a very prevailing error, under which many persons represent the whole body of the clergy as the *governors* and the laity as the *governed* of Christ's church. In the laws and constitution of Great Britain, and indeed of all Christian states, the general division of the community into *clergy* and *laity*, seems to have given rise to this mistake. This misconceived notion of the clergy has occasioned many erroneous and dangerous opinions: one was imputed to the Roman Catholics, though I do not find that any of them ever held it, viz. that the king is head only of the laity; that the clergy compose the church; and his majesty, being only a layman, has no sort of power or authority over the church of Christ. The assumption of such being the doctrine of the Roman Catholic church, afforded the pretext for demanding the oath of supremacy, which, as I shall endeavour to shew hereafter, goes infinitely beyond the mere negation of such an opinion, which, I believe, every Roman Catholic has ever been ready heartily to disavow. Dr. Sherlock speaks very clearly and decisively upon this point \*: "Though the clergy have of late in

BOOK II.  
 CHAP. IV.

Clergy and  
 laity.

Newport in 1648, who opposed episcopacy, as by his majesty king Charles the First, who gave his full reasons, why he could not in conscience consent to the abolition of the episcopal government. The reasons, answers and replies, which are worthy of attentive perusal, were published together in a small quarto in 1660.

\* Discourse of the Nature, Unity and Communion of the Catholic Church, p. 32. 34.

" a great



BOOK II. " a great measure monopolized the name of the church to them-  
 CHAP. IV. " selves, yet in propriety of speech they do not belong to the de-  
 " finition of it: *they are indeed the governors of the church\**, as  
 " they have received authority from Christ the supreme lord and  
 " bishop of the church; but they are no more the church, than  
 " the king is his kingdom, or the shepherd his flock; the bishops  
 " and pastors of the church, considered as such, represent the head,  
 " but not the body." &c.

Effect of  
ordination.

Such of the clergy as have received holy orders, have acquired thereby a real spiritual character and capacity of exercising certain spiritual functions, which before their ordination they did not possess: but this ordination produces of itself, *ex vi suâ*, no *civil* effect upon the party ordained; by it he neither loses nor acquires any civil or temporal advantage; he remains equally subject to the civil magistrate. This is fully exemplified in the case of a Roman Catholic priest at present in this country. Admitting (as the established church does admit) the validity of his ordination, it is notorious, that by it he becomes intitled to no benefit right or advantage in the state, from which before his ordination he was excluded: for as the system of Christianity is perfect and consistent, and universally applicable to, because absolutely independent of all sorts of civil government, the rights

\* This Divine, like many others, seems not to have attended minutely to the real distinction between the governors and governed in the church.

and



and powers of the ministers of that system cannot in their nature in any manner affect or be affected by the *civil magistrate*.

BOOK II.

CHAP. IV.

Many laws of the State apply to the clergy of the established church by way of exemption, privilege, right, benefit, honor, preferment, dignities, possessions, succession and representation: but whatever they enjoy, possess or are entitled to above or beyond the laity, is the pure and sole effect of the laws of the State; for the laws or regulations of the church could produce no such effect: and without the laws of the State, a Protestant clergyman would acquire merely by his ordination or jurisdiction no more *civil* advantage, than is now conferred upon a Roman Catholic clergyman, or a dissenting minister by *his* ordination or spiritual jurisdiction.

There is an essential difference to be made between *order* and *jurisdiction*; the first gives, as I have said, a character and a capacity of exercising the ministry when called upon: in the ancient church, orders were seldom or ever conferred upon persons, till they were chosen or appointed to exercise the ministry, and therefore the collation of *spiritual* jurisdiction has been frequently and erroneously supposed to be given by the act of ordination; but they are so perfectly distinct from each other, that a person in full orders (even in the episcopal order) may have no share or part whatsoever in the government of the church,



BOOK II.  
CHAP. IV.  
Spiritual jurisdiction.

church, whilst a person not even in deacon's orders\* may in some instances possess and exercise it. It is by *jurisdiction* that the government of the church is supported and carried on, and to such only who have it, is our duty of spiritual submission and obedience to be performed. There is certainly a general deference and respect due from all Christians to the character of a clergyman, who has received ordination, and is destined and generally prepared to exercise the spiritual functions and ministry of the gospel, when he shall be called upon or commissioned by the proper spiritual authority to do it: but the specific and obligatory duty of obedience, which is required of Christians, can only be fulfilled by paying obedience to those, who are lawfully deputed to superintend watch over and provide for the care of their souls; and this generally speaking is confined to each man's bishop, and to those, who act under him by his delegation or commission to exercise the ministry over a part of his flock.

\* This may perhaps appear singular to some of my readers; but I take it to be Protestant as well as Roman Catholic doctrine. "A bishop, as a bishop, had never any ecclesiastical jurisdiction; for as soon as he was *electus confirmatus*, that is after the three proclamations in Bow-church, he might exercise jurisdiction before he was consecrated; nor till then he was no bishop, neither could he give orders: besides suffragans were bishops, and they never claimed any jurisdiction." *Discourses of John Selden, printed in quarto, 1689, p. 4.* With this agrees the learned judge Sir Matthew Hale, who says, "That every bishop, by his *election* and *confirmation*, even before consecration, had ecclesiastical jurisdiction annexed to his office." *Hist. Com. Law, ch. 11.*

So



So a parishioner by obeying his rector or curate fulfils his obedience to the bishop, who instituted him to exercise his spiritual functions over that particular parish as a part of his diocese. The authority of a Christian bishop consists in the lawful delegation of a portion of that jurisdiction, which Christ has deposited with his church: and the government of Christ's church, according to the opinion of those, who admit of episcopacy, is properly speaking confined to the *episcopal* order\*. I have before said, that a person may be even of the prelatial order without possessing any *spiritual* jurisdiction, consequently without being a *governor* of Christ's church. As the distinction between *order* and *jurisdiction* must never be kept out of the view of those, who wish to possess clear and explicit ideas of church government, I shall make it the subject of the ensuing chapter.

\* "The care of the Catholic church was committed jointly as well as severally, and in the whole as well as in part to the apostles and their successors the bishops, in which the government of the church differs from the government of the world." Hickes's Christian Priesthood asserted, &c. edit. 3d, 1711. p. 211.



## C H A P. V.

## OF ORDER AND JURISDICTION.

*Nature of Episcopacy. Difference of Roman Catholic and Protestant Doctrine. Whether Spiritual Jurisdiction be conferred by the King of England. Ceremonies of Ordination and Consecration in the Church of England. What Act confers Jurisdiction. Presentation, Institution and Induction of the Inferior Clergy. Nomination, Confirmation and Investiture of Bishops. Statutes concerning the Appointment of Bishops fully admit the different and distinct Sources of each. The Civil Magistrate cannot compel Institution or Confirmation.*

BOOK II.  
CHAP. V.

UPON the constitution or formation of church governors, as episcopacy is believed in common by both, there is some difference between the church of England and the church of Rome: but much slighter than is generally imagined: the mere statement of the facts will fully explain the difference; and I have professed to treat all points of difference that relate to, or in any manner affect religion historically, not polemically.

Constitution  
of an English  
Bishop.

There cannot be a more formal and solemn avowal, that the real *spiritual* authority of a bishop of the church of England is granted immediately by God, than the words of the commis-

sion



tion given to Cranmer for his bishopric, in which there is this exception: *per & ultra ea quæ tibi ex sacris literis divinitus commissæ esse dignoscuntur*, i. e. “over and above those powers and “authorities, which the holy scriptures do testify are given to “thee by God.” These the king did not presume to grant: and this comprizes what is meant by the *power of the keys*: as it is more fully expressed in a declaration made of the function and divine institution of bishops and priests, subscribed by the lord Cromwell then vicegerent to the king in ecclesiastical matters, archbishop Cranmer with the archbishop of York, eleven other bishops and twenty divines and canonists. *This power of the keys*, which the bishops receive not from the temporal or civil power, is again more fully explained in the judgment of eight bishops upon the king’s supremacy, of which Cranmer was the first. “Bishops and priests have the charge of souls, are the “messengers of Christ to teach the truth of his gospel, and to “loose and bind sin, &c. as Christ was the messenger of his “Father.” Such precisely is the Roman Catholic doctrine upon episcopal authority.

It is often asserted, that the *spiritual* jurisdiction of English bishops is conferred upon them by the king, as supreme head of the church of England; and therefore by their enemies and opponents the reality of their *spiritual* jurisdiction is called in question. Even the illustrious Warburton, inattentive to the difference between order and mission, gives fully into this opinion. In



BOOK II.

CHAP. V.

Laws con-  
cerning the  
King's supre-  
macy.

matters of this extreme delicacy and importance no controversy should ever be instituted, till the facts, upon which it turns, be admitted by both parties. In the present case, though the facts be very material, they appear to have been unknown to one side, and not insisted upon by the other. I as a lawyer am certainly within the line of my own province, when I endeavour to ascertain the existing laws and usages of my country concerning so important a subject: nor shall I be guilty of transgressing that line by further investigating and discussing their obligations and effects. A clear proof of the abuse of a law is full evidence of the existence of the law. I readily admit, that the laws respecting the king's supremacy have been in some instances exceeded and abused both by Henry VIII. and Queen Elizabeth: but as the same laws exist at this hour unaltered, every doubt and difficulty will be cleared up by considering fully and fairly what his present Majesty is now entitled and authorized to do by these very laws. King George III. has not more, but as much power and right to grant *spiritual* or *ecclesiastical* jurisdiction as his predecessors Henry and Elizabeth. What his present Majesty cannot do, could not have been legally done by them: the power and authority then of the King as supreme head of the church of England will be rightly determined, by the nature of the subsisting laws of England.

Neither in the church of England nor in the church of Rome is the *spiritual jurisdiction* or the *power of the keys* supposed to be granted



granted by the state, but to be derived by succession from the apostles. I know not how better to explain these matters, than by calling the attention of my readers to the practice and usage of consecrating and ordaining the superior and inferior clergy in the church of England. Having done this in part in my *Jura Anglorum*, I shall not repeat, but only add to what I have there said as much as in my judgment will be necessary to clear the subject of doubt, ambiguity and confusion. My grand object is to draw strongly the line of demarcation between the *temporal* and *spiritual* power: that each being distinctly known, may be steadily submitted to.

BOOK II.  
CHAP. V.

Power of the  
keys not  
granted by  
the state.

As in the church of Rome and in the church of England jurisdiction is looked upon distinct from order, in both it is common for persons to be in deacon's and priest's orders, who have no actual jurisdiction over any part of the church of Christ. In the church of Rome it has always continued a custom to have *suffragans*, *chorepiscopi* or *coadjutors* to archbishops and other bishops of large dioceses, who are persons, that have received the episcopal order by consecration, but are without any specific jurisdiction, having no diocese of their own, and are employed in the dioceses of other prelates to help them in performing such acts as can only be done by the order of bishops: such as ordaining deacons and priests, consecrating altars, giving confirmation, &c. The validity and propriety of such bishops without jurisdiction

Suffragans,  
chorepiscopi  
&c. in episcopal orders  
without jurisdiction.



BOOK II. jurisdiction are strongly supported by the learned author \* of  
CHAP. V. "The Account of Church Government and Church Governors,"

throughout his twelfth chapter: in it he has made a very long quotation from Dr. Beveridge's learned annotation on the *pandectæ canonum*, which ends with this clear admission of the difference:

"For the power of ordination arises not from the assignation of a  
"diocese, but from episcopal order." Nothing however can so emphatically prove the difference between jurisdiction and order, as the words of the ordination and consecration used by the church of England, by which the priests and bishops receive the order, which capacitates them to perform their functions generally in

Ordination of  
priests in the  
established  
church.

the church of God †: "Receive ye the Holy Ghost for the of-  
"fice and work of a priest in the church of God, now com-  
"mitted unto thee by the imposition of our hands. Whose  
"sins thou dost forgive, they are forgiven: and whose sins thou  
"dost retain, they are retained. And be thou a faithful dis-  
"penser of the word of God and of his holy sacraments in the  
"name of the Father and of the Son and of the Holy Ghost,  
"Amen." After the pronunciation of these words and the im-  
position of hands by the bishop, the person, over whom they  
were pronounced and imposed, has received priest's orders:  
but he has received no jurisdiction, as appears by the ensuing  
ceremony of the bishop's delivering to him a bible, saying,

\* Supposed to be Bishop Fleetwood.

† Vide Book of Common Prayer.

"Take



“Take thou authority to preach the word of God and to minister the holy sacraments in the congregation, *when thou shalt be lawfully appointed thereto.*” This future and eventual appointment to a congregation (which is jurisdiction) demonstrates, that it is not given nor conferred upon him by the act of ordination.

BOOK II.  
CHAP. V.

The consecration of a bishop is performed in the like general manner without reference to any particular diocese or jurisdiction over any specific portion of the church of Christ. The archbishop and bishops present laying their hands upon the head of the elected bishop, say \*, “Receive the Holy Ghost for the office and work of a bishop in the church of God, now committed unto thee by the imposition of our hands. In the name of the Father and of the Son and of the Holy Ghost. *Amen.* And remember that thou stir up the grace of God, which is given thee by this imposition of our hands: for God hath not given us the spirit of fear, but of power and love and soberness.” By this imposition of hands and the pronunciation of these words, the person consecrated receives the episcopal order: but no words in the ritual expressly assign to him that particular portion of Christ’s church, which he is to govern: the act therefore of consecration is not that act, which confers the jurisdiction: it is therefore a separate act: for a person once consecrated must

Consecration  
of bishops.

\* Vide Book of Common Prayer.



BOOK II. ever retain the episcopal order: but the particular jurisdiction  
 CHAP. V. over a certain portion of the church, which he may at first have received, may be lost, by translation, deposition, deprivation, surrender or resignation.

Imputation  
 against lay  
 supremacy.

In the greatest heat of controversy our king has never been supposed capable, as supreme head of the church of England, to ordain or consecrate or do any other act of the ministry, for which order is requisite: but it has been generally imputed to the church of England, that the spiritual jurisdiction, in which properly the government of Christ's church consists, is really given by the king; and therefore it is urged against them, that as the church of Christ is avowedly independent of all *civil* or *temporal* authority, that jurisdiction cannot be really *spiritual* or *ecclesiastical*, which is derived from a lay source: this is a delicate and important object of discussion, which I shall hereafter endeavour to clear of the general misconception and prejudice, under which it has been usually represented.

We are now tracing and considering the act, by which the *spiritual* jurisdiction of an English bishop, as a church governor, is actually conferred upon the individual clergyman, since this act of collation of the *spiritual* jurisdiction imposes the obligation upon the *governed* to submit to and obey him in all things, to which his *spiritual* or *ecclesiastical* jurisdiction extends. For as this jurisdiction, whether it be of a bishop or a rector, is  
 limited



limited to certain geographical boundaries, they must be known, in order to ascertain the individuals, upon whom it attaches. This is the more necessary for British subjects to know, because the law of the land alters the *nature of the civil crime* of murder into petit treason, *when a man secular or religious slayeth his prelate, to whom he oweth faith and obedience*\*; and this he only oweth to *his own* prelate, not to any person indiscriminately of the episcopal order.

BOOK II.  
CHAP. V.

Extent of  
episcopal ju-  
risdiction.

The laws and usages of this realm before and since the reformation have always kept up the proper distinction and difference between the *spiritual* and *temporal* power in the investiture or collation of spiritual jurisdiction both in the high and the inferior clergy. As the manner and form of instituting the latter still remain the same as before the reformation, I shall briefly state the process of the inferior clergy's receiving *spiritual jurisdiction*, for the better explaining the similar process in the episcopal order, in which some alteration has taken place in this country since that period.

Investiture or  
collation of  
spiritual ju-  
risdiction.

The right of nominating or choosing a person, and of presenting him to the bishop, is a mere *civil* right given and settled by the State, wherever there is any land benefice or temporality annexed unto the living or preferment, to which the clerk is in-

Right of no-  
mination.

\* 25 Edward III.



BOOK II.

CHAP. V.

tended or proposed to be promoted : and the person to whom such right of presentation or advowson belongs, is called the patron of the church or living ; he or his ancestors or those, under whom he claims this right having actually given or appropriated the land or temporalities to that church or living. This right of presenting a clerk to the bishop to be instituted confers not any *spiritual* authority or jurisdiction on the person presented, nor has he any cure of souls in the parish, till he has been *instituted* by the bishop ; for institution is the act, by which he receives the *spiritual jurisdiction*, and in this act the lay patron in no manner concurs. So \*, “ though the patron presents, yet the “ minister does not officiate wholly (he should have said, not at “ all) by the patron’s power, who had only the right of nomination, but by authority of the bishop, who instituted him, “ and indeed whose curate and substitute he is. So common “ a thing is it for one to choose or nominate the person, and “ another to convey to him his authority.” The *induction* of the minister is a mere *civil* ceremony, to invest him with the temporalities, and to convey notice thereof to his parishioners, that they may know, to whom tythes and other dues are to be paid. Thus does it distinctly appear, in the establishment of a minister or parson of a parish, what proceeds from the *civil* and what from the *spiritual* power : and it is evident, that the act

Institution.

Induction.

\* Turner’s Vindication of the Rights of the Christian Church, p. 124.



of consecration or imposition of hands, which confers *order*, is separate and distinct from the act of institution, which gives *jurisdiction*. BOOK II.  
CHAR. V.

The like difference between the *spiritual* and *temporal* power was distinguishable in the promotion of bishops to their sees equally before, as since the reformation. As the temporalities of the bishoprics were by permission of the State given and settled, as it were, in perpetuity or mortmain chiefly by our kings for the purposes, which I before mentioned, so the right of designation nomination or presentation of the person, who should become entitled to the enjoyment of them, being a *civil* right, was vested in the king, and was exercised by his giving to the chapter his *congé d'élire* or his licence to choose a particular person; for in this the king was properly the lay patron: so by the statute of provisors (25 Edward III.) it was ordered and stablished, that the free elections of “ archbishops  
“ bishops and all other dignities and benefices elective in Eng-  
“ land shall hold from henceforth in the manner, as they were  
“ granted by the king's progenitors and the ancestors of other  
“ lords founders of the said dignities and other benefices. And  
“ that all prelates and other people of holy church, which have  
“ advowsons of any benefices of the king's gift or of any of his  
“ progenitors, or of other lords or donors, to do divine services  
“ and other charges thereof ordained, shall have their collations  
“ and presentments freely to the same in the manner, as they  
A a 2 “ were



BOOK II. "were enfeoffed by the donors." This right of presentation or  
 CHAP. V. nomination being in its nature a *civil* right, was an object of  
 Presentation to benefices a proper provision for the legislature, and makes the whole subject  
*civil* right. of this act \*. "For presenting a nomination to benefices, we  
 "have oftentimes said, that there is no difficulty, but that the tem-  
 "poral prince may present in such benefices or bishoprics, as he  
 "is patron of."

The real pa-  
 pal suprema-  
 cy over our  
 Roman Ca-  
 tholic ances-  
 tors.

Our Roman Catholic ancestors of those days fairly discriminated between the *civil* and the *spiritual* powers. They held the bishop of Rome to be the visible head of the church upon earth, from or through whom, as the supreme head of the hierarchy, all *spiritual* jurisdiction was to flow to every subordinate member of it: but they allowed him no sort of original or independent authority or control over temporalities, for all temporalities came under their legislative or supreme *civil* authority, and consequently could not have been committed by Christ to his church. Endless confusion and mischief would necessarily arise out of the admission of a mixed or double supreme power over the same object. Hence will it follow as an axiom, that the church can possess no right nor power, which is in the state: nor can the state claim any, which is in the church. To the Pope then, as to the spiritual and supreme head of the church, they allowed not only the full primacy of honor, but also of *spiritual* juris-

\* Parsons' Answer to Coke, p. 294.



dition \*. They could not allow to him any particle of *civil* authority *direct* or *indirect* within this realm, without the consent of the people,

BOOK II.

CHAP. V.

\* As to most of my English readers the term *Papist* probably conveys an idea or impression of derision pity contempt or hatred, it may not be improper to state briefly, what opinions have been formerly holden and may be still maintained by some Roman Catholic divines concerning the power of the Roman pontiff over the Christian world. They are three. The *first* is the most extravagant of all, and never at any time had many supporters. One of the most open and determined abettors of this opinion was *Thomas Bosius* an Oratorian. It is thus reported by *William Barclay*, *De Potestate Papæ in Principes Christianos*, p. 6. printed in 1609. "Omni vim regiam, omniumque rerum quæ in terris sunt potestatem & dominium datum esse Romano Pontifici *jure divino*." The *second* opinion, which at one time was very prevalent among Roman Catholic divines, but is now maintained by very few, is what is usually spoken of as *ultramontane* doctrine: such as was holden by *Bellarmino*, *Parsons*, *Saunders*, *Allen*, and indeed by all those divines, who allow to the Roman pontiff any original right or power to affect or dispose of ecclesiastical property, or to grant any civil immunities to the clergy, or to command or direct sovereigns and states so to do out of the dominions of the court of Rome. Barclay reduces this opinion into the following statement, p. 5. "Pontificem, ut pontificem, non habere directè ullam temporalem potestatem, sed solum spirituales: tamen ratione spiritualis habere saltem indirectè potestatem quandam, eamque summam, disponendi de temporalibus rebus omnium Christianorum." The *third* is the absolute negative of both these opinions, which of course denies to the Pope any power over sovereign states or individuals out of his own territories *direct* or *indirect* in temporal matters. This third opinion is grounded upon the essential nature of *spiritual* power; which is holden by the governors of the church, such only, as it was given by Christ to the apostles. This *third* opinion was generally holden

by



BOOK II.  
CHAP. V.

people, expressed by an act of the legislature. Let us then see how the legislature at that day (A. D. 1350, 25 Edward III.) expressed the sentiments of the nation: and such did they continue till the reformation (A. D. 1533), viz. for 183 years; though the nation continued during all that period eminently distinguished for its submission and attachment to the Holy See.

by all the Gallican clergy: and since the year 1682 every member of the Sorbonne has sworn to teach and defend it before his admission to any degree or preferment in the church. In like manner has it now been sworn to by the general body of Roman Catholics in Great Britain and Ireland. It may be conjectured with probability, that if the English Roman Catholics had, under Elizabeth, James I. and the two Charles's, been permitted or had consented to swear against the *direct* and *indirect* power of the Roman Pontiff over the temporalities, the church of England would not have separated from the communion of that of Rome any more than the Gallican church had: and it may be asserted with certainty, that the English statutes would not have been stained by some of the most cruel and sanguinary laws, that ever blackened the code of a Christian nation. The idea of this extension of the papal power beyond what is admitted by the Gallican clergy being the efficient and fundamental cause of the separation is strongly urged in the *regale* and *pontificale*. It is also alluded to in a publication intitled *Vox Populi*, printed in 1690, and republished in the first volume of State Tracts, p. 680. "How much all the fierceness of Archbishops Laud and Bramhall, Dr. Heylin, Bishops Marley Gunning and Sparrow, Dr. Saywell, Mr. Dodwell, &c. against all dissenters at home, and their strange chillness to the reformed churches abroad, is owing to a miserable fondness for this notion, as the hopeful ground of a reconciliation between the church of England and the French church, that has cast off the papal infallibility, it were no difficult task to shew, and were worthy the observation of any historian," &c.

"The



“ \* The bishop of Rome, accroaching to him the feignories of such  
 “ possessions and benefices, doth give and grant the same benefices  
 “ to aliens, which did never dwell in England, and to cardinals,  
 “ which might not dwell here, and to other as well aliens as deni-  
 “ zens, as if he had been patron or advowee of the said dignities  
 “ and benefices, AS HE WAS NOT OF RIGHT by the law of  
 “ England.”

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CHAP. V.

As to the spiritual jurisdiction of the bishops †, “ it was com-  
 “ mon Catholic doctrine at that time, as it is now, that epif-  
 “ copal jurisdiction cannot be given by any, but by him that hath  
 “ it eminently and with superiority in himself, which must be by  
 “ ordination commission and descent from the apostles, to whom  
 “ it was given *in capite*, as before we have declared, to descend  
 “ down by succession, and the said ordination and imposition of  
 “ hands to the world’s end, upon bishops, prelates and pastors,  
 “ by lawful subordination the one unto the other.” The differ-  
 ence between the church of England and the church of Rome  
 upon this point does not consist in the former’s deriving the  
*spiritual or ecclesiastical* jurisdiction of their bishops from the king  
 or any lay source, but in not holding it necessary to receive it  
 from or through the bishop of Rome. In Catholic as well as in  
 Protestant times, the right of nomination or presentation to a bi-  
 shopric was, as a *civil* right, vested in the king as the lay patron ;

Roman Ca-  
 tholic doc-  
 trine upon  
 episcopal ju-  
 risdiction.

Protestant  
 doctrine.

\* 25 Edward III. st. 6.

† Parsons’ Answer to Coke, p. 297.

and



BOOK II. and the legislature consequently altered, new regulated and  
CHAP. V. settled the *civil* right with as much propriety, as it had originally granted it to the king.

At all times advowsons, which in an inferior degree are civil rights of the same quality or nature as the right of nominating to a bishopric, were objects of the laws of the State: they are both designations of persons or presentations to others for procuring a quality, dignity or power, which it was not competent for the person presenting to confer. In the Roman Catholic, as well as in the Established Church, the *spiritual* jurisdiction is conferred upon the bishops by an act separate and distinct from the election, or consecration, or investiture of the temporalities\*. “What properly constitutes a bishop, is his confirmation, or as it is now called, his institution or provision: by this he is IN-VESTED WITH DIVINE JURISDICTION over a certain portion of the flock of Christ: by this he derives, through an uninterrupted succession of bishops during eighteen centuries, a portion of that authority, which Christ immediately communicated to his apostles.”

Act of collation of the spiritual jurisdiction with Roman Catholics.

This Reverend Divine also cites Cabbasutius, *Theor. & Prax.* l. iv. c. 7. who expressly says, that “he who is chosen or nominated bishop, cannot exercise any spiritual jurisdiction

\* Milner’s Divine Right of Episcopacy, p. 38.

“until



“ until he be confirmed by the Holy See: but as soon as he  
 “ is instituted and confirmed by the Pope, although he be not  
 “ consecrated, he can perform every thing, that relates to jurisdic-  
 “ tion, but not what relates to episcopal order. Thus he shews,  
 “ he is competent to excommunicate, give faculties, &c. but  
 “ not to confer order, consecrate altars,” &c. l. iv. c. 1.

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 CHAP. V.

So is it in the established church of England\*: “ The de-  
 “ finitive sentence, or the act of confirmation, by which the  
 “ judge (*i. e.* the officer of the archbishop) committeth to the  
 “ bishop elected, the care, governance and administration of the  
 “ spiritualities. And, after election and CONFIRMATION, and  
 “ NOT BEFORE, the bishop is fully invested to exercise all spi-  
 “ ritual jurisdiction.” And again, “ When a bishop is trans-  
 “ lated, the former see is not void by the election to the new  
 “ one, until the election is CONFIRMED by the archbishop:” or  
 in other words, till the elected or nominated has received the *spi-*  
*ritual* jurisdiction over the diocese, to which he is elected nomi-  
 nated or translated. Every mode or form of designing the  
 person, who is intended to be invested with the *spiritual jurif-*  
*isdiction*, is a *civil* right. So whether the bishops were elected, as  
 once they were by the clergy and people, or whether, to avoid  
 the evils of popular election, they were nominated by the emperors

How confer-  
 red in the  
 established  
 church of  
 England.

\* Burn's Ecclesiastical Law, vol. i. 148. Gibb. 110. God. 25, 26, 27.



BOOK II.  
CHAP. V.

and other sovereigns, or whether they were chosen by the canons or chapters of the cathedral churches; whether they were elected by letters of *congé d'élire* as in England, or whether they were donative by letters patent as in Ireland, (1 Salk. 136) any of these first steps towards the appointment of the bishop to a share in the spiritual government of Christ's church, could only be a mode of expressing the wish or desire or judgment of the laity or *civil* power in favor of the person nominated presented or elected.

Spiritual jurisdiction of English bishops not from the *civil* magistrate.

The source, from which they derive their *spiritual* jurisdiction, and thereby become *governors of the church of Christ*, is independent of all human temporal or *civil* authority whatsoever: and although there be certain practices forms and terms in use in this kingdom, which from not being fairly and minutely considered, may afford grounds for presuming the *spiritual jurisdiction* of English bishops to proceed from the state or the civil power; yet if we take the whole of the circumstances under our consideration, and examine attentively and impartially the laws respecting this subject (which it is my province and duty to do), we shall find, that they are emphatically grounded in the principle, that the source of *spiritual jurisdiction and church government* is completely out of the competency or power of the *civil* magistrate.

Nothing



Nothing can more clearly denote the distinct and separate sources, from which the bishop's title to his *spiritual* jurisdiction and the enjoyment of his temporalities are supposed or believed to flow, than the form of the writ, which when the dean and chapter have elected a bishop without the king's assent, is issued to a person to take the fealty of the bishop so elected without the previous consent of his majesty: which Fitzherbert\*, who wrote in the time of Henry the Eighth, said, was *thus in the old register*. After noticing the circumstances of the vacancy, the election without the king's previous assent, and the adhibition of special favor of the royal assent to the election, it continues:

"We have given you power, that if it happen such election by  
 "the metropolitan of the place to be CANONICALLY CONFIRM-  
 "ED, and this you by the letters patent of the metropolitan  
 "of that place be made to know, then the fealty of him the  
 "elect to us due in this part in our name you receive, and  
 "the temporalities of that bishoprick as the name is, to be  
 "restored you cause in our stead," &c. By which process it  
 clearly appears, that the confirmation or the act; by which the  
*spiritual jurisdiction* is confirmed, is not even supposed to proceed  
 from the king; for he only authorises his commissioner condi-

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The act of  
 confirmation  
 independent  
 of the king.

\* Fitzherbert's new Natura Brev. p. 419. I know of no means so effectual to discover the spirit, intention and nature of a law, as to consider minutely the words and operation of the original writs, by which the law is in fact executed.



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## CHAP. V.

tionally to do for him that, which he might himself do, when it shall have been certified to him, that the act collating the spiritual jurisdiction had been perfected by the person or power competent to grant it. It should be remarked, that the king assumes by this writ no right of interference with or control over the act of *confirmation*: but all that he requires is, that the metropolitan of the province should either give it or see it given; for to that effect was to be the *certificate*, viz. that the person elected, had been validly and effectually made a governor of the church of Christ, by having a part thereof, viz. the particular diocese to which he was elected, allotted to his care and superintendence. And this act of *confirmation* was wholly distinct from the act of consecration, which might be performed by any three bishops not even of the province. Thus we see both before and since the reformation, that the distinction has always been kept up by the *laws of the land* between the *spiritual* jurisdiction and the consecration, election and investiture of *bishops*.

Difference  
between the  
church of  
Rome and the  
church of  
England.

The great and indeed only difference that exists between the church of Rome and the church of England with reference to church government appears to be, that the former admits of one visible head of the hierarchy, or a supreme bishop over the whole church of Christ, from or through whom all *spiritual jurisdiction* is derived to the different governors of the church: the latter rejects the necessity of a visible head to the hierarchy, and consequently does not admit of the universal primacy of jurisdiction  
in



in the bishop of Rome, and does not therefore hold any *spiritual* communion with the See of Rome. It allows that real and valid ordination and jurisdiction were received by St. Austin from St. Gregory, then bishop of Rome, who founded the archiepiscopal see of Canterbury; and that valid ordination and spiritual jurisdiction have been continued by succession, and are now vested in the same plenitude in the present archbishop of Canterbury, as they were in St. Austin. That from this source all subordinate spiritual jurisdiction and order continue to be validly derived independently of the existing bishop of Rome. They admit of no supreme *spiritual* head of the universal church but Christ its founder. I shall hereafter speak of the spirit and effect of the declaration, that *the king of England is the supreme head of the church of England upon earth immediately under Christ.*

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The great, and properly speaking the only difference with reference to church government effected by the reformation, was the subtraction of this last link of the chain of jurisdiction or power, which in the Roman Catholic belief\* connects the powers

Roman Catholic doctrine concerning a visible head of the universal church.

\* Where the whole Roman Catholic church professes a necessity of admitting so fundamental an article of faith, and holds it out to her members as an essential term of communion, the quotation of one approved Roman Catholic Divine will ascertain the doctrine of their church, as well as one thousand. At the beginning of the last century, the Dalmatian bishop Antonius de Dominis fled from the dominion of the Pope to James the First, under whose protection he



BOOK II. powers of the visible church of Christ upon earth immediately  
 CHAP. V. with its invisible head Christ in heaven. This they find ne-

he published his ten books *De Republicâ Ecclesiasticâ*, against the Spiritual Primacy of the See of Rome. This was first answered in 1617, by John Sweet, an English Jesuit, whose life is to be found in Allegambes Biblioth. Script. Soc. Jesu. He enters very fully into the subject, and seems to have collected together the chief arguments used by Roman Catholic Divines in support of the necessity of a visible head of the hierarchy. His book is intituled *Monfignr. Fate Voi, or a Discovery of the Dalmatian Apostata M. Antonius de Dominis, and his Books by C. A. to his Friend, P. R. Student of the Laws of the Middle Temple*. The controversy spread, and was taken up by Martin Becanus the Jesuit professor of divinity at Vienna, and handled more in the strict scholastic manner of those days: and in 1619, he published his four books *De Republicâ Ecclesiasticâ, contra M. Ant. de Dominis, nuper Archiepiscopum Spalatensem, nunc Desertorem et Apostatam, &c.* If any person be curious to see the arguments used in this controversy, he will find them all collected in these two publications. As I only notice religious opinions historically, I shall quote as much from this latter author, as will ascertain what the Roman Catholic doctrine is upon the point. P. 28. he tells his antagonist, "In quo non solum dissentis a Catholicis, qui constanter docent Pontificem Romanum caput esse ecclesiæ, loco Christi." And p. 37. "Fatemur Christum absentem non minus instruere ministros suos, quam si presens esset: non quidem immediate per se, sed mediante suo vicario, quem in terris habet." This indeed has at all times been the doctrine of the Roman Catholic church, as may be proved by numberless writers. So explicitly spoke St. Jerome, *Adversus Jovinianum*, l. 2. "But the church, say you, is founded upon Peter, although the very same thing is elsewhere attributed to all the apostles, and they all received the keys of the kingdom of heaven, and the support of the church depends upon them all in common? Yet nevertheless amongst the twelve, one is made choice of and made head of the rest, to take away all occasion of schism."

cessary



cessary to preserve the hierarchy and unity of faith and government of the Catholic church; and they therefore believe, when Christ told St. Peter, "Thou art a rock, and upon this rock I will build my church, and the gates of hell shall not prevail against it," that he gave to him a primacy of jurisdiction over his whole church, which has hitherto been continued, and by virtue of God's promise, not by human means or power, will continue by regular succession to the end of the world.

The church of England denies, that any primacy of jurisdiction was given to St. Peter over the other apostles and the church in general; consequently that there is no such primacy of jurisdiction in the successors of St. Peter over the whole church of Christ: but they hold equally with Roman Catholics, that a regular succession of ordination and jurisdiction must be traced up to the apostles, in order to constitute a person a real governor of Christ's church.

Protestant  
doctrine of  
apostolical  
succession.

The truth or falsity of these opposite opinions are points of *spiritual* controversy, which I enter not into: they are the proper objects of theological disquisition. Seeing then there is but one opinion between us concerning the origin and nature of *spiritual* or *ecclesiastical* authority, I say generally, that the church of England admits of the same authority, and consequently the same obligation of submission to it, as the Roman Catholic church:

Protestants  
and Roman  
Catholics  
agree as to  
the origin  
and nature  
of *spiritual*  
power.



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for they both maintain, that the authority extends to the same objects, and is derived from the same source and through the same means, that is, from Christ, through the apostles and their successors.

The discretionary exercise of spiritual power not within the control of the civil legislature.

It is said by a very respectable Protestant Divine\*, "On all hands it is plain, that as our laws stand at present the church is left wholly independent of the state, as to her purely spiritual power and authority. *Quod erat demonstrandum.* And if there is or has been any practices contrary to these laws, yet that annuls not the laws." I have nothing to say in commendation or justification of the law (25 Henry VIII. c. 20.) by which, "if any archbishop or bishop refuse to consecrate the person so elected or nominated within twenty days after such election or nomination is signified to them by the king's letters patents &c. he shall incur the dangers pains and penalties of the statute of provision and præmunire:" for it appears to be an attempt to control and force the *spiritual governors* of the church to exercise their powers even against their judgment and conscience. Whereas, if the spiritual power be holden independently of all *temporal* power, the exercise of that power cannot in its nature be subject to the coercion of the *civil* legislature. But this very act is the most emphatical evidence, that the legislature of this country admits, that the act of consecra-

\* The Case of the Regale and Pontificate stated, p. 67, 68.



tion and ordination, and that of confirmation or collation of BOOK II.  
CHAP. V. real *spiritual* power over a portion of the church of Christ, cannot be performed by, or proceed from the *civil* magistrate. For though the legislature undertake to punish by a civil law the archbishop, who refuses to exercise his *spiritual* powers upon an individual (which may be unjust), yet it neither attempts nor pretends to authorise the king or any other person to do it for him: under the proper conviction, that no act proceeding from the civil power or community can by any possibility constitute a bishop or a real governor of any part of Christ's church.

The parliament of that day was not inattentive to the difference between the *civil* and *spiritual* powers. For as the designation of the person, who was intended to be presented to the archbishop for institution, confirmation, consecration or ordination, was a mere civil right; so it provided, that in the case of the Dean and Chapter "deferring the election above twelve days" "after the receipt of the said licence and letters missive, then the" "king shall nominate by his letters patents such a person to the" "said office and dignity, as he shall think able and convenient for" "the same. And the king shall appoint the archbishop with two" "other bishops, or if there be no archbishops, then four bishops," "to consecrate and invest the person so nominated or elected."

Nomination  
by letters pa-  
tent.

Here the appointment by letters patent is substituted in lieu of the election by the Dean and Chapter, and is equally effectual



BOOK II.  
CHAP. V.

for the purpose of designing the party to be confirmed and consecrated: but such appointment could not substitute the acts of confirmation and consecration: and therefore the legislature attempted it not. By inflicting a punishment upon the Archbishop for refusing to exercise his power in a particular manner, and by not supplying the effects of that refusal by any other means, the legislature directly avowed, that the Archbishop possesses the exclusive right or power of doing the act: for if the act itself were within the control of the *civil* magistrate, and he wished it to be done, it is evident, that he would have directed or empowered some other person to do it, upon the refusal of the Archbishop. Hence it follows as a corollary, that the *spiritual* power may even against the presentation or nomination of the *civil* power place a person properly qualified in the government of the church: and to such person will all Christians within the boundaries of his jurisdiction be conscientiously bounden to pay their *spiritual* submission and obedience. In countries where the Christian religion has a *civil* establishment, and temporalities or civil advantages are annexed and appropriated to bishoprics, it rarely happens, that bishops are made against the will of the *civil* magistrate. This proves the prudence, with which the *spiritual* power is exercised; but establishes with precision, in whom the sole right, and consequently the liberty of exercising it, is vested. Thus speaks the great and learned Gallican prelate, Bossuet\*, "Thus the Catholic church speaks to her children, Ye are a people, a state, a so-

Prudent exercise of the *spiritual* power.

\* Quoted by Mr. Milner in his Divine Right of Episcopacy, p. 16.

"ciety:



"ciety : but Jesus Christ, who is your King, holds nothing  
 "from you : his authority is of a higher origin. You have no  
 "greater right to say who shall be his ministers than you have  
 "to appoint him to be your sovereign. Thus your pastors, who  
 "are his ministers, derive their title from the same high source,  
 "that Christ himself does : and it is essential, that they should be  
 "placed over you by an order of his appointment. The kingdom  
 "of Christ is not of this world, nor can any adequate compari-  
 "son be made between his kingdom and the kingdom of the  
 "earth. In a word, nature affords us nothing that bears a con-  
 "formity with the spiritual kingdom of Christ : nor have you  
 "any other right, than that which you find in the laws and  
 "customs immemorial of this society. Now these are from  
 "the times of the apostles down to the present times : that the  
 "pastors already constituted should constitute others. Choose  
 "ye, says the apostle, and we shall appoint. It was Titus's  
 "business to appoint the pastors of Crete, and it was from Paul  
 "appointed by Jesus Christ, that he received his power."

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CHAP. V.

Divine ap-  
pointment of  
bishops.

I cannot too frequently remind my readers, that at the refor-  
 mation no alteration was attempted to be made in the mode  
 of conferring spiritual jurisdiction : it was only prohibited by  
 the 25 Henry VIII. to derive it from the See of Rome. The  
 act of confirmation in Roman Catholic times was the publica-  
 tion of the Pope's Bull, by which he conferred the spiritual ju-  
 risdiction : which act of confirmation was after the reformation

Act of con-  
firmation.



## BOOK II.

## CHAP. V.

continued to be required from the Archbishop, who was to  
 “ confirm the said election, and to invest and consecrate the per-  
 “ son so elected, to the office and dignity that he is elected unto,  
 “ and to give and use to him such pall benedictions ceremonies  
 “ and all other things requisite for the same, without suing to  
 “ the See of Rome in that behalf.”

Homage for  
 the tempora-  
 lities.

After this follows a pure civil ceremony, viz. \* “ The bishop  
 “ being introduced into the king’s presence shall do his homage for  
 “ his temporalities or barony, by kneeling down and putting his  
 “ hands between the hands of the King sitting in his chair of state,  
 “ and by taking a solemn oath to be true and faithful to his ma-  
 “ jesty, and that he holds his temporalities of him.” God. 27.

The examination of the truth of this position, viz. that *the bishop holds his temporalities of the king*, I must reserve for a future investigation, when I shall inquire more minutely into the nature of church lands and ecclesiastical property. The remaining point concerning church government, that I have to consider is, in what things the governors have a right to command, and the governed are under obligation to obey.

\* Burn’s Ecclesiastical Law, vol. i. p. 151.



## C H A P. VI.

## OF THE OBJECTS OF THE SPIRITUAL POWER.

*Power of the Keys. Canon Law. Church Discipline. Indefectibility and Infallibility of the Church.*

THE line of conscientious obedience must be commensurate with the extent of obligatory jurisdiction, as is self-evident. I know no term so emphatically expressive of the whole scope of *spiritual* power and jurisdiction, as what is usually understood *by the power of the keys*. Whoever believes the establishment of Christianity, must necessarily believe, that it was first instituted and still subsists in virtue and by the means of that power, which Christ gave to his apostles, and which has been and will be perpetuated by regular succession from them to the end of time. But the succession and perpetuation of this *power of the keys*, which is not a temporal civil or human power in its origin nature or effects, if it now exist at all, must necessarily exist such precisely, as it was originally given by Christ, neither increased altered nor diminished by man or any human power events or occurrences. Human wisdom cannot improve the system of the divine legislator, nor can that system suffer from the weak or impious efforts of man to disturb alter or overturn it. As therefore every Christian must admit, that the spiritual kingdom or law of grace, which Christ established upon earth,

BOOK II.

CHAP. VI.

Power of the keys.



BOOK II.  
CHAP. VI. earth, cannot in its nature be prejudicial to any lawful form of civil government, but must on the contrary enforce submission and obedience to our temporal governors; I shall presume that I render service to my country in explaining, and thereby enforcing, the conscientious duties, which as Christians we owe to the authority of the church and its governors.

BOOK II.  
CHAP. VI. In order that the duty of obedience may be punctually performed, the persons to be obeyed must be distinctly ascertained. All power, both civil and spiritual, is either original and supreme, or derivative and subordinate. The conscientious obligation of submitting to each is one and the same; for the derivative authority is only submitted to, because it emanates from the original, which is supreme and coercive. All subordinate and derivative authority or jurisdiction must essentially be limited; for the supreme power cannot delegate its own supremacy. Here in England, according to the established religion, a member of the established Protestant church must, within the line of the spiritual jurisdiction (or power of the keys), obey the rector of his parish, and the curate to whom the rector may delegate some portion of his authority; and he obeys the rector, because he has been lawfully instituted by his bishop; and he owes obedience to his bishop, because he has been lawfully confirmed by the archbishop, or, in other words, because the archbishop or metropolitan has instituted him bishop or spiritual governor of the diocese, in which the individual resides. He admits of the validity



validity of such confirmation or institution by the archbishop, because he believes his Grace to have been properly consecrated and confirmed in that see in regular succession from St. Austin, who was first instituted to it by St. Gregory, an avowed successor of St. Peter. In tracing the different titles, by which the governors of the church of England make out their right to be obeyed by its members or the governed, no civil right or claim is introduced: no defect nor irregularity in the presentation or nomination, or in the letters patent or mandate of the king, or in the introduction or investiture of the temporalities, can create a flaw or defect in their title of *governors*, or weaken or defeat the obligation of the governed to submit unto it. But I must proceed to ascertain what things are within the competency of the spiritual power of the church to *command*; and by this we shall know our duty and obligation of obeying.

BOOK II.  
CHAP. VI.

Bishops' title  
to their *spiritual*  
power.

I wish to be as brief and as clear as possible in arguing upon points of such delicate importance. If the power, which Christ gave to his apostles be that power, which they have transmitted to the church governors of the present day, it is fairly, as I have before observed, comprised in the term, *power of the keys*: now this power is evidently confined and limited to such objects only which were taught, enforced and enjoined by the apostles themselves. The most full and complete assemblage of church governors, or representation of the visible church upon earth, can no more exceed the line or boundary of the spiritual jurisdiction

Objects of  
the *spiritual*  
power.

or



BOOK II.  
CHAP. VI.

or power, than the curate who is delegated to execute the smallest particle of that same jurisdiction, which is committed to his charge by his rector, who is the deputy or attorney of the bishop of the diocese, who instituted him. Hence it follows, that the doctrine or dogm of the Christian revelation, which immediately and of its own nature concerns religion, and relates to the salvation of souls, is of the competence of the spiritual power to teach and exemplify: and the same spiritual power, or church governors, may impose purely *spiritual* discipline upon the governed.

It is a false criterion of the spiritual power, to confine it only to the internal and invisible calls and obligations of conscience. As the church of Christ is a visible society of human individuals, so must the laws of its government affect these individuals visibly and externally.\* “ We acknowledge in the church  
“ the power which it has received from God, to preserve, by  
“ the authority of preaching, legislation and judgment, the  
“ rules of faith and morals, and the discipline which is necessary  
“ for the preservation of its government; the succession and per-  
“ petuity of its ministry, which must last for ever without inter-  
“ ruption. The church teaches, decides and condemns. Its mi-  
“ nistry, which is visible, sensibly affects visible objects, though  
“ only of a pure spiritual nature.” In this sense or acceptation,

\* Pey. 3 vol. De l'Autorité de deux Puissances, p. 28.



the canon law binds all Christians unexceptionably, when confined to the proper objects of its competency. *Est jus canonicum quod civium actiones ad finem eternæ beatitudinis dirigit.* BOOK II.  
CHAP. VI.  
Canon law.

That is canon law, which directs the actions of men to eternal happiness. This end and purpose directly embrace those objects, which are not comprised within the delegation of *human* or *civil* power. I do not by this mean to import, that the human legislature cannot or ought not to make laws, that may tend to promote the general (and consequently the eternal) happiness of mankind: but that the care of souls is not within their mission, or the nature of their jurisdiction. On the other hand, the care of souls is the only object of the *spiritual* power or jurisdiction. It is evident, that such injunctions only can command our *spiritual* obedience and submission, as it is competent for our spiritual superiors to enforce. We all know, that St. Paul speaking to the Hebrews of church governors, has expressly said (Heb. xiii. 17.) "Obey them that have the rule over you, for they watch over your souls, as being to give an account." Now no man will deny, that this obedience is required from Christians to their spiritual superiors, as members of the kingdom of Christ; consequently, that it is to be performed by the observance of those laws, to which the power or jurisdiction of the kingdom of Christ extends. This is the object of our present enquiry.

*Civil* power has no care of souls: *spiritual* power has no other care.

As St. Paul enjoins obedience to those, who have the rule over

D d

us,



BOOK II.  
CHAP. VI.

Church go-  
vernors watch  
over our  
souls.

us, we must necessarily conclude, that there are some things, in which they have a right to command. But I pretend not to enter into a detail of the particular injunctions, that church governors may impose upon the governed, nor to examine to what degree or extent the obedience of individuals is required to their *spiritual rulers*; but generally to ascertain to what objects the power of church governors (or the *spiritual authority*) applies. They are said to watch over our souls, and to be accountable for them: the objects therefore of their responsible vigilance, consequently of their power, can only affect our souls: but as on account of the union of man's soul with his body, few things can be said to affect the one, without producing some indirect or collateral effect upon the other, many mistakes and errors have arisen about the nature of *spiritual authority*.

As the mission of our Divine Redeemer was perfect in its institution and execution, it follows, that the whole law and all the mysteries of the Christian religion were fully taught and revealed by its blessed founder, who deputed his apostles to instruct all nations in whatever he had taught them; insomuch that, before they properly began or entered upon their divine mission, the Holy Ghost or Spirit was sent upon them, in order to prepare them for their evangelical work, which demanded a plenitude of knowledge of that, which they were to teach, and which before our Lord's ascension they had not. "I have yet  
" many



“many things to say unto you, but you cannot bear them now,” BOOK II.  
CHAP. VI.  
said Christ to his apostles, John xvi. 12, 13. “But when he,  
“the Spirit of Truth, shall come, he will teach you all truth.”

The church cannot therefore now make any new articles of  
faith, but can only declare, what was revealed and inspired to  
the apostles to teach all mankind: neither can the successors of  
the apostles exercise, because they cannot acquire, any other  
power, than what they received from their Divine Master.

My Reverend Correspondent (p. 198) says, “That to deny  
“a power in the church to make such laws, or to maintain,  
“that her decrees can only obtain force and take effect by the  
“consent of the civil power of different states, is a notion that  
“you seem to have imbibed from some of our modern writers,  
“but what is absolutely erroneous.” I shall ever be as ready  
to retract and correct an erroneous opinion, as I shall be for-  
ward to support such as I shall judge true.

The passage of my *Jura Anglorum* to which my Correspon-  
dent alludes is in p. 257, to the following effect: “When  
“they (i. e. councils) direct recommend or enjoin matter of  
“ecclesiastical discipline, they know that their judgments or de-  
“crees can only obtain force and take effect by the consent of  
“the civil power of the different states,” &c. In this position  
I have neither been sufficiently express nor correct. By it, I  
certainly meant not to take from the church the right or power

How far the  
church may  
impose disci-  
pline without  
the concur-  
rence of the  
state.



BOOK II.  
CHAP. VI.

of imposing purely spiritual discipline upon its members. I have publicly said \*, “ The Roman Catholics, as I presume every other church does, allow their church to appoint and ordain feasts and fasts, and generally to regulate and do every thing that is merely of a spiritual jurisdiction or nature.” Whatever I have said in my *Jura Anglorum* concerning the right of the state to adopt or reject any discipline, which the church may impose, was meant and intended only of such discipline or regulations, as by some are supposed to be of a mixed nature : or which is so intermingled with the external objects, over which the State exercises an uncontrollable power or jurisdiction, that the immediate source of action or efficient principle is not obviously discernible without very close attention and clear perceptions. But upon considering and examining this question more fully, I am now deliberately of opinion, that there can be no *mixt* or joint act of church and state. For whatever the church has a right to ordain, the state can have no right to reject or oppose. As the church of Christ is catholic or universal, it cannot possibly be confined to any particular nation community or division of mankind ; now no human legislature can extend any act of its power beyond the limits of its respective jurisdiction : and therefore no act of any particular state can bind or affect the church of Christ, which is in every sense and meaning independent of the *civil* or *human* authority, and confined to no such geographical limits and boundaries, as all *civil* power essentially is.

*Civil* authority essentially limited, cannot extend over the whole church.

\* Case Stated, p. 48.



I have searched in vain to find out a term or epithet, by which I could fairly discriminate that sort of pure spiritual discipline which the church can impose, that is not connected with or in any manner dependent upon the state, from another species of discipline, which may so far be dependent upon the state, that its observance essentially rests upon the existence or continuance of certain usages rights or privileges granted and permitted by the state. Of the first sort, I understand that discipline, which enjoins feasts and fasts, regulates divine service, the manners, conditions and times of administering the sacraments: In the second sort I comprize all points of discipline, which affect public churches, ceremonies, and other circumstances which arise out of the civil establishment given by the state to the Christian religion. The church is equally free and independent of the state in directing either sort of discipline: though the one may be enjoined absolutely and universally, the other only conditionally and partially; the effect depending upon the act of each state, which may alter the establishment, to which the discipline is adapted.

BOOK II.  
CHAP. VI.

Different species of discipline.

In order to set forth in a perfectly clear light the nature of our obligation to submit to church authority, we should coolly and steadily reflect upon the two essential attributes of the church, *indefectibility* and *infallibility*: the first is holden and believed in common both by the church of England and the church of Rome: the latter is generally (perhaps not justly) supposed



BOOK II. supposed to be believed *only* by the church of Rome. Of this  
CHAP. VI. however I shall treat more distinctly in the ensuing chapter.

Indefeſtibi-  
lity of the  
church.

I have before ſhewn, that Biſhop Pearson, Thorndyke and other Proteſtant divines hold, as well as Roman Catholics, the *indeſeſtibility* of the church of Chriſt: that is, that ſhe never will periſh fail or be entirely deſtroyed.\* “For if the church of  
“ Chriſt ſhould ever become inviſible or be entirely deſtitute of  
“ true biſhops and paſtors; that is, if the ſucceſſion of her  
“ biſhops and paſtors deſcending from the apoſtles ſhould fail  
“ entirely; then as a family without an heir is ſaid to be ex-  
“ tinct, ſo the true church of Chriſt, which was built by him  
“ upon the foundation of the apoſtles, and ſubſiſts by the ſpi-  
“ ritual generation of her biſhops and paſtors, would properly  
“ be ſaid to periſh and loſe her being: and the impoſſibility  
“ of this, as being inconſiſtent with the promiſes of God, is called  
“ her indeſeſtibility.”

Church au-  
thority.

Our divine Redeemer appears ſo jealous of the authority of the governors of his church, that he expreſſly declares it equally binding as his own: “As my Father ſent me, ſo I ſend  
“ you:” John xx. and “He that hears you, hears me: and  
“ he that deſpiſes you, deſpiſes me.” Luke x. It ſuffices to make this general concluſion, that there does exiſt amongſt

\* Manning’s England’s Converſion and Reformation compared, p. 35.



Christians a conscientious obligation of obeying or submitting their judgment to those, whom God *commands them to hear*—  
 “Obey them that have the rule over you, and submit yourselves: for they watch over your souls.” Heb. xiii. In what particular manner every British subject is to perform this duty of submission to his church governors, I do not attempt to determine. That would be a task of controversy and theology; and my particular study is to examine the laws of England and their effects and operations upon the establishment given to the Protestant church of England.

BOOK II.  
 CHAP. VI.

Since my Reverend Correspondent has so repeatedly charged me with “deviating from the faith which I once professed, and “scandalizing the church which I once revered,” I feel myself called upon to declare openly and explicitly the extent of that power, which I admit in the church to command, and consequently the extent of *my* obligation to obey. *Pure spiritual* church discipline may certainly be imposed upon all members or subjects of the church without any consent or interference of the state. This discipline may be changed or abrogated according to times places and circumstances: for such mutability is essential to the nature of all discipline, and depends upon the discretion and judgment of the imposer of it.

*Pure spiritual  
 discipline.*

The terms *irreformable*, *unerring* and *infallible* are only by their nature applicable to such things as are immutable; such are the  
 faith



BOOK II.  
CHAP. VI.

faith and doctrine of the church upon the Christian revelation, and to these the promise of Christ, that they shall not vary, must necessarily apply: otherwise the kingdom of truth, which he established upon earth, might run into error, and it could not then remain immutable in that unity of faith, which is essential to its continuing *one*.

Christian  
doctrine ap-  
plicable to all.

As Christ commissioned his apostles to teach his doctrine to all mankind, so no part of it can be applicable to some, and not to others. The duty of faith or submission to the revealed truths of the Christian religion is unexceptionably and indispensably and equally binding upon every Christian from Lapland to the Cape of Good Hope. Such decrees of the church are no new laws or injunctions, but declarations only, that such was the doctrine revealed and taught by Christ. As I only believe, that the promise of inerrancy is confined strictly to such declarations, to such only am I bounden to submit my understanding. Man believes not an article of divine faith because it is self-evident to him (for there can be no evidence of a mystery which is above human comprehension): but he believes it because the church teaches it, and he finds it rational to depend upon the testimony of the church, which teaches and informs him, what those mysteries and truths are, which were revealed to the apostles, and by them committed as a sacred trust to their successors, to be delivered down as *revealed truths* to all generations successively to the end of time. There-

Nature of di-  
vine faith.



fore says St. Paul, "Faith is by hearing;" Rom. x.; and to shew, that it is the voice of our church governors, that we are to hear, Christ tells us, that "he that hears you hears me."

BOOK II.  
CHAP. VI.

Luke x. Upon this authority do I believe the scriptures to be of divine inspiration; and for this same reason St. Austin said, "that he would not believe the Gospels themselves, unless the authority of the Church compelled him to it." Epist. cont. Fund. c. 4. Under this point of view, few Christians, I presume, will doubt or deny, that they are under some sort of obligation to submit their judgment to others upon spiritual or religious matters: otherwise no church government would exist, nor would there be a difference between the *governors* and *governed*. But the delicacy and indeed the importance of the subject requires me to mark very distinctly the line, which circumscribes the duty of our submission to the spiritual power. Much has been frequently and erroneously said upon this subject, to the prejudice and scandal of his Majesty's Roman Catholic subjects, who profess to believe, that the Church of Christ must from its nature be infallible, or always true and just in holding out terms of communion to her children, which chiefly consist in the adoption of the belief of certain revealed mysteries of the Christian religion.

I have applied what I have hitherto said of church government chiefly to the reformed church of England, and to the Roman Catholic church. The reformation introduced no other

E e

alteration,



BOOK II.

CHAP. VI.

alteration, as I have before observed, into that system, excepting as to the necessity of the bishops receiving confirmation from the Pope as from the chief pastor of the whole Catholic church. To this general system of church government, our common law and all the statutes of this realm apply: and my professed purpose is to investigate and ascertain the source, nature and effects of the *spiritual* power with reference to the constitution and laws of England. The general principles, upon which I have endeavoured to settle my belief and practice in the aggregate of my social and christian duties, will, I flatter myself, equally and unexceptionably apply to every description of persons, who collectively or individually profess to believe in Jesus Christ, or even that God has at some time or other, since the creation of man, taught or established a specific system of religion, beyond what man could have learned of himself by the mere light of nature.

General application of principles to every system of religion.

I conceive not the possibility of any voluntary society of human beings associated for the purpose of joining in and following the worship of God, which does not admit of a power either in the body at large, or in particular individuals of the society to order and direct what tends to the attainment of the ends, for which they originally associated, separate and distinct from and independent of any civil or other religious society whatsoever. Thus I presume, amongst the Presbyterians, the relative religious duties of the presbyters, elders, teachers or governors



vernors and of the congregation, are looked upon to be uncontrollable either by the State, or by any other religious society or congregation of human individuals. I likewise suppose, that the society of persons called Quakers hold themselves obliged to the performance of certain *spiritual* duties, which are not enjoined them by the State, or by any other religious or ecclesiastical body, society or individual; and upon this principle of independence and sovereignty of their religious association or corporation, do they deny the right of others to impose oaths upon them, or to demand from them tythes, as provisions for the ministers of the gospel.

BOOK II.  
CHAP. VI.  
*Spiritual power amongst Presbyterians and Quakers.*

It is foreign from my object to compare different religious systems: it is morally impossible, that the same individual should be perfectly indifferent to all: if he have any religion at all, and few men are without some, the adoption of a particular religion, or the becoming or remaining a member of a particular society body or congregation, bespeaks his choice or the manner, in which he has used his liberty of conscience. All those religious societies, which hold, that the *spiritual* or *ecclesiastical* power, to which they submit, extends only to the objects, which are not under the control of the civil or temporal power of the State, and who square their practice with their belief, never can be detrimental or dangerous, and therefore never ought to be obnoxious to any *civil* or temporal government whatever.

*Spiritual obedience detrimental to no State.*



## BOOK II.

## CHAP. VI.

Duty of the  
civil magis-  
trate to main-  
tain his own  
independ-  
ence.

There have unfortunately been very unwarrantable attempts, at different periods, to bring the immediate and direct objects of the *civil* power under the control of the *spiritual*; and they have ever been followed by incalculable evils: it becomes, in all such cases, the conscientious duty of the *civil* magistrate to preserve his own sovereign independence, which has been delegated to him by the community at large; and he ought consequently to keep under proper checks and restraints such subjects, as profess to maintain and practise doctrines, which are incompatible with, or encroaching upon the complete sovereignty of the civil magistrate. Such, for example, were the doctrines of the temporal dispensing and deposing powers of the Pope: such also was that doctrine of John Wickliffe, that the *civil* magistrate loses all his power and dominion whilst he is in mortal sin; for if such an opinion were carried into practice, rebellion and anarchy must become the inevitable consequences. As the *civil* magistrate receives his power from the community, and the community judges not of conscience either collectively or individually, it is evident, that the condition of his keeping his conscience perfectly clear of any mortal offence against God (which may be committed even in thought), is not the tenure, by which the community delegated to him his power and dominion. Rightly then did Melancthon say\*, “*Insaniit Wicleffus, qui sensit impios nullum dominium habere.*”

\* Disput. de Jure Magistratum.



## C H A P. VII.

OF THE COMPATIBILITY OF THE ROMAN CATHOLICS' DOCTRINE OF THE INFALLIBILITY OF THE CHURCH, WITH THE OBSERVANCE OF THEIR OATH AND THEIR CIVIL DUTIES TO THE STATE.

*Severity and Unreasonableness of the existing Penal Laws against Catholics' Doctrine of the Infallibility of the Church. To what the Infallibility extends. Taken too largely by many. Councils of Lateran exceeded the Powers of the Church. Bossuet admits those Councils to have exceeded their Competency. Difference of Temporal and Spiritual Laws. Roman Catholics' Declaration deposited in the Museum. All Christians obliged to submit to the Church in Dogm and Spiritual Discipline. Church Laws null upon Objects not of their Competency. Each Individual the Judge of such Competency.*

WHEN we reflect, that some of the most rigorous and severe BOOK II.  
(I had almost said cruel and unjust) laws, that blacken our CHAP. VII.  
penal code, have been made against and still operate upon many  
thousand British subjects, merely upon an assumption, that as  
Roman Catholics they are by their religious tenets incapable  
of loyalty duty or affection to the British constitution, I need  
not



BOOK II.

CHAP. VII.

Grounds of  
the penal  
laws against  
Roman Ca-  
tholics.

Unceasing  
operation of  
statutes.

not apologize for attempting to elucidate and ascertain the real grounds, upon which these laws were originally enacted, and are still continued in full force and efficacy against the suffering objects of their rigor and severity. Our law knows not what it is for a statute to run into *desuetude*, as in Scotland old laws never executed for a length of time become obsolete and lose their force. With us *magna charta* is as operative and effectual at this moment, as on the day after it received the royal sanction and assent at Runnymede. But if any thing can add to the operative efficacy of a statute, it is the deliberate refusal of parliament to repeal it, upon motion and a subsequent debate upon the expediency or necessity of the repeal. Such refusal, being a tacit expression of the will of the legislature, is a species of re-enactment. Much as of late years the penal laws against the Roman Catholic subjects of this kingdom have been canvassed and debated upon both in and out of Parliament, not one of them has been yet absolutely repealed. By the 20th and 30th of his present Majesty, some relief has been afforded to such of his Majesty's English Roman Catholic subjects, as should take particular oaths expressive of their adoption of such principles, as are congenial with the spirit of the British constitution, and the renunciation of others that are incompatible with its preservation.

In the very last session of parliament separate motions to  
admit



admit them to the first right of a British subject, the elective franchise, and to enable them to defend their country by land or sea were negatived in the house of commons even without a division. Thus deliberately, if not contemptuously, were rejected the just claims of thousands of loyal and dutiful Englishmen, who from ancient hereditary descent have preserved for centuries a love and affection for their country and constitution under the most trying persecutions and humiliating disabilities: Englishmen, whose offers to serve their king and country are rejected, merely because they are Roman Catholics, whilst his Majesty was enabled by parliament to arm foreigners professing that same religion. It had hitherto been an untried experiment to endear Englishmen to their constitution, by depriving them of the active and passive right of representation in parliament, and disabling them by law from defending their country, their property and their persons. Of the fact, no man's assurance, be it ever so great, can move a doubt; for the reason and consequences of the fact let those answer who caused it.

BOOK II.  
CHAP. VII.

Parliament  
refuses to ad-  
mit Roman  
Catholics to  
the first rights  
of subjects.

A very special test both of religious and civil opinions has been proposed by the legislature to the English Roman Catholics, in order to qualify them for enjoying that sort of partial emancipation, which it has graciously doled out to them to attach their affections to the constitution of their country. If the legislature were not convinced, that Roman Catholics were sincere

Religious and  
civil test de-  
manded of  
Roman Ca-  
tholics.

in



BOOK II. in observing their oaths, they would not have been so particular  
 CHAP. VII. in framing what they intended should ensure the loyalty and  
 duty of the jurors: for the forms and terms of an oath must  
 be totally indifferent and immaterial to the person, who means  
 not to keep it.

Doctrine of  
 infallibility  
 not merely  
 speculative.

Were the doctrine of infallibility of the church in every sense  
 a mere speculative opinion, I should say without hesitation,  
 that it is as much out of the control of the interference of the  
 state as any religious dogm upon the Eucharist or the Trinity.  
 But if the delegates and guardians of the sovereign temporal  
 power be convinced, that a part of the community maintain and  
 admit of any power paramount to their own, which can control  
 it in any degree whatever, it becomes their duty to make pro-  
 vision and take security against the *civil* consequences of such  
 doctrines. If therefore they believe a Roman Catholic to be in-  
 dispensably bounden to submit to and obey every declaration  
 decree ordinance or command of a general council of his  
 church as infallibly true and just; and that undeniable evidence  
 can be adduced to prove, that councils, which Roman Catholics  
 admit as *æcumenical*, and which are therefore lawful and obliga-  
 tory upon their whole church, have decreed it lawful *on any*  
*occasion* for the spiritual power of the church to interfere with  
*civil* governments, or depose temporal princes, or to release Ro-  
 man Catholic subjects from their civil allegiance to heretical  
 princes on account of their heresy; then I say, their duty to  
 their



their constituents and delegators conscientiously obliges them to secure the state against any mischievous effects from the adoption and maintenance of these doctrines. We must now enquire how far this is intended to be, and is actually, effected by the oath prescribed to be taken by all Roman Catholic subjects of England, which is contained in page 93.

BOOK II.  
CHAP. VII.

The body of Roman Catholics is fairly and fully committed by this oath, as I have endeavoured to prove. It is the test and criterion of their belief and conduct towards the state. It is thus specially and minutely worded, in order to prove to the public, that the religion duty and belief of the individual respecting his own church breaks not in upon the civil duties and obligations, which he owes to the state. My Reverend Correspondent is not the only modern writer, I am sorry to say, whose arguments call upon those, who have taken this oath, to convince the public, that they did it with their eyes open in the full sincerity of their hearts, and that the unequivocal and minute observance of it neither clashes with their duties to God, nor their social and civil obligations to man.

Effect of the  
Roman Ca-  
tholic oath.

The *infallibility* of the church is the doctrine of Roman Catholics, which has been perhaps more than any other misconceived and misrepresented: when rightly understood it is the ground work of their faith; and, without entering into the reasons and arguments for the belief, I cannot dissemble, that it

What really  
meant by the  
infallibility of  
the church.

F f

appears



BOOK II. appears to me a doctrine absolutely inseparable from any system  
 CHAP. VII. grounded on Christian revelation. It consists merely in the fulfilling  
 of Christ's promise to his church, that he will "teach her all  
 "truth to the end of time." It is a necessary consequence of  
 her *indefectibility*: for as she cannot by natural means ensure  
 against all contingencies the keeping up of an uninterrupted  
 succession of bishops and pastors, but only by virtue of the  
 promise of Christ; so the same promise goes to preserve the  
*unity* of her faith and doctrine, which in fact constitutes her  
*infallibility*: for the continuance of the government of the  
 church, or its *indefectibility*, if it taught a doctrine different from  
 that of Jesus Christ, would not in fact be a continuance of *his*  
 church. The learned prelate of Chester expressly says, \*  
 "By virtue of his all-sufficient promise, I am assured that there  
 "was, has been hitherto, now is, and hereafter will be, as long as  
 "the sun and moon endure, a church of Christ *one and the same*,"  
 consequently teaching the doctrines, which Christ taught: and  
 if she always have, now do, and always will, teach the doctrine  
 of Christ, that must be true doctrine: if it be always true, she  
 then must be an unerring guide. In this consists the *infallibility*  
 which Roman Catholics hold; viz. believing, as they and all  
 other Christians do, that Christ came upon earth to establish the  
 Christian faith, and having promised, that this establishment  
 shall last till the consummation of the world, they rely upon

\* Pearson, ubi supra.



his promise, that he will not permit the gates of hell to prevail against her, nor the kingdom of truth to be overcome by falsehood, which it might, if it could teach and enforce error. They therefore believe, that God will not permit, that his church shall teach and propagate any erroneous doctrine as the doctrine revealed and taught by himself, and preached by his apostles to all mankind. They rest assured, that by God's providence in disposing all things for the perpetuation of the church, in spite of the natural infirmities and fallibility of particular bishops and pastors, Christ's promise of *infallibility* to his church will be made good by his teaching her all truth, and abiding with her to the end of time. The continuance of church government by the uninterrupted succession of pastors, which is its *indefectibility*, is as little likely to be effected by natural means, as the preservation of its faith, which is its *infallibility*; the promise of God can alone ensure either. It is absurd therefore to look up for this infallibility to the personal character or respectability of the individual rulers or governors of the church.

Indefectibility and infallibility of the church.

Even under the eyes of our blessed Redeemer, out of the college of the twelve apostles, one betrayed his master, another forswore him, all forsook him. Let no man then imagine, that this attribute of infallibility, which Roman Catholics hold necessary for the continuance of the church, is pretended to



BOOK II. stamp with unerring truth every thing pronounced or decreed  
CHAP. VII. by the governors of the church, either collectively or individually, or to sanctify every action, which they have or may perform. The line or boundary, within which the promise of God secures to his church this inerrancy or infallibility is very obvious: it is confined to a declaratory power of ascertaining what Christ revealed, and his apostles taught and preached to mankind. They rely upon his promise, that the church, which he came upon earth to found, shall ever continue to teach the faith, which he revealed to his apostles, and commissioned them and their successors to teach to all mankind unto the end of time: for having said, "Go therefore and teach all nations," &c. (Mat. 28.), he immediately added, "and lo I am with you" "always, even unto the end of the world."

What I have said concerning the declaratory power of the church, extends only to such points of the Christian revelation as must, from their nature, affect every Christian individual throughout the universe; consequently the church cannot perform any act, to which this divine promise of infallibility really attaches, which does not by its essential nature command and bind the submission of every Christian unexceptionably. But the obligations imposed by particular church governors, in cases of spiritual discipline, do not attach absolutely to every individual of the whole church, but to such only, as owe obedience to



the particular governor, who enjoins the discipline, by being BOOK II.  
CHAP. VII. resident within the district or geographical limits, over which his jurisdiction extends. Thus a feast ordered throughout the province of Canterbury would not bind a native of Canterbury, whilst he resided in the province of York or at Dublin. Though the church have the power to enjoin spiritual discipline, yet no promise of irreformability was annexed to the exercise of that power; she may model, repeal and change her discipline, as and when she thinks it adviseable. Thus were the primitive faithful at one time commanded to abstain from blood and strangled meats, and afterwards permitted to eat them without any distinction from other meats. What is meant by *infallibility*, *irreformability* or *inerrancy*, is the sure and exclusive preservative of truth, which is in its nature invariable either from time or circumstances: but it is not applicable even to propriety, policy or prudence, upon which all points of discipline are enjoined, which essentially vary with times and circumstances.

Infallibility  
inapplicable  
to church  
discipline.

A man ceases to be a Roman Catholic, who ceases to believe, that Jesus Christ promised to teach all truth to his church till the end of time, consequently that the faith, which she now teaches is the same, which he revealed to his apostles; and therefore, that *in declaring his revealed doctrine* the church cannot err, or deceive us. The inerrancy therefore of the church, according to the true and fair exposition of Roman Catholic doctrine, is nothing more nor less, than the promise of God to preserve and

Roman Catholics' obligation of believing the infallibility of the church.

■ continue



BOOK II. continue the identity of that faith, which Christ revealed, and  
 CHAP. VII. taught whilst upon earth, and the apostles after his ascension  
 preached to all nations.

The learned bishop of Chester says upon these words of the gospel, *Lo I am with you always, even unto the end of the world,* “ Now the cause of that continuance is “ the presence of Christ:” and upon this presence of Christ do Roman Catholics also rest their assurance, that he will not permit his church to teach error, or indeed any other than his own doctrine. The actual revelation and promulgation of the law of Christ operate as the binding precept of injunction to every man to submit to and adopt it; no new tenet can be added to it, no new obligation of believing can be imposed upon its children. Hence Vincent of Lerin’s golden rule of Christian faith, *Quod semper, quod ab omnibus, quod ubique creditum, id ego credo.*

The immediate object of my investigation is to ascertain the effects, which the obligation of a Roman Catholic to believe the infallibility of the church produces upon the observance of his oath and his civil duties as a British subject. \* “ When Catholics say, the universal church on earth is infallible in matters “ of divine faith, or deciding controversies of religion; by her

\* Wit against Reason, by H. C. a Roman Catholic Divine, printed 1735, page 36.

“ infalli-



“ infallibility they mean no more than her perpetual orthodoxy,  
 “ or that she always judges right concerning the Christian re-  
 “ velation.” In whomsoever the full and complete right of  
 judging concerning the Christian revelation is vested, in them  
 exists the right of commanding our submission to their judg-  
 ment or declarations concerning it; because to such judgments  
 or declarations we believe the promise of Christ “ to abide with  
 “ his church” does really attach. Now although Roman Ca-  
 tholics believe this promise of Christ to influence his church  
 in all her judgments and declarations *concerning the Christian*  
*revelation*, yet her inerrancy or infallibility, which is the imme-  
 diate effect of this promise, goes no further than to her judg-  
 ments and declarations *concerning the Christian revelation*. To  
 this, and this alone, extends the *unerring* right of the church to  
 decide; and no otherwise ought Catholic authors to be under-  
 stood, when they say, \* “ It is an article of Catholic faith, that  
 “ the church of Christ is infallible in her doctrine, decisions and  
 “ canons, on points of faith and morals.” The Christian revela-  
 tion can only, properly speaking, apply to doctrine, which is  
 immutable, not to canons or discipline, which may be, and often  
 are, changed. † “ Church discipline regards either the ceremo-  
 “ nies of religion, or holiness of morals: therefore both these  
 “ objects refer immediately, and by their nature, to a spiritual

To what  
points  
Christ's  
promise of in-  
errancy ex-  
tends.

The church's  
right to en-  
join disci-  
pline.

\* Dr. Troy's Pastoral Instructor, p. 72.

† Pey. vol. ii. p. 64.

“ end;



BOOK II. "end; they are consequently of the competency (or jurisdic-  
 CHAP. VII. "tion) of the church." Roman Catholics admit of the spiri-  
 tual power to direct and enjoin church discipline, and that they  
 are conscientiously obliged to observe it when enjoined, because  
 such power was given to the apostles by Christ. But the promise,  
 which Christ made of infallibility to his church, which prevents  
 her from teaching error concerning the Christian revelation, goes  
 not to the extent of securing the governors of his church against  
 ever attempting to exceed the limits or boundaries of the origi-  
 nal *spiritual* powers given by Christ to his apostles.

Christian obe-  
 dience not  
 confined to  
 the declara-  
 tory acts con-  
 cerning Chris-  
 tian revela-  
 tion.

The extent and nature of the submission, which Roman Ca-  
 tholics are obliged to give to the infallible decrees of the church  
 (I speak with deference to the opinions of some very learned  
 divines) appears to me too loosely and widely described, when  
 the right of making such decrees is said to extend over every  
 thing, which can directly or indirectly affect our consciences: it  
 is true, that the spiritual power extends to nothing, which does  
 not affect our consciences; but it is not true, that every thing  
 which indirectly affects our consciences is *immediately* subject to  
 the *spiritual* power: nor is it true, that Christian obedience to  
 the commands and injunctions of the *spiritual* power is thereby  
 confined to the belief of and submission to those acts of the church,  
 to which the promise of infallibility applies, which are only de-  
 claratory acts concerning the Christian revelation. An indivi-  
 dual resident in England, is obliged in conscience to obey the  
 king



king of England, and to respect and not purloin the property of his neighbour: but the spiritual power or church of Christ has no right or authority to interfere with the loyalty of the individual, nor to affect in any manner the right of the sovereign to his throne, nor of the individual to his property.

BOOK II.  
CHAP. VII.

The objections of inconsistency and falsity alleged by the adversaries of the Roman Catholics against the general propositions\*, "That general councils are infallible in their doctrinal decisions and canons on points of faith and morals, and that Catholics are obliged to adhere implicitly to such decrees and canons," are generally made upon the presumption that this quality of *infallibility* so affects and influences whatever is done by a general council, as to render it *holy* and *infallible*, and consequently conscientiously binding. The anonymous author thus closely argues upon the subject: "If this proposition be true, he must therefore acknowledge the decrees of that council (the 4th Lateran) to contain good and sound doctrine on all points of morals, to which they relate." But that council "not only declared and promulgated the deposing power, but actually practised it, and passed a decree confirming it in all similar cases, and prescribed the mode, in which it was to be exercised, and by that decree they also sanctioned the very power of absolving subjects from their oaths." He then infers,

Unwarrantable extension of the doctrine of infallibility.

\* Inquiry into the Consistency of Dr. Troy's Pastoral Instructor, by S. N. P. 5.



BOOK II. " Now this decree declares the opinion of the council on a point  
 CHAP. VII. " of morality of very great importance, on the rights of kings  
 " and the duties of subjects: and to have erred in such a decree  
 " would surely be inconsistent with the infallibility Dr. Troy  
 " has attributed to this council: by admitting that infallibility  
 " therefore he has involved himself in a difficulty, from which he  
 " will not find it easy to extricate himself: its decrees and the  
 " first and fourth article of the declaration (subscribed by the  
 " Irish Roman Catholics) contradicting each other, both can-  
 " not be true," &c. These consequences evidently flow from  
 the premises taken in the extensive sense, in which they are some-  
 times understood: he also strengthens his argument by the in-  
 stance of the Emperor Henry IV. being deposed by the Pope,  
 and his subjects being absolved from their oaths of allegiance;  
 all which was confirmed by five successive Popes in five different  
 councils, and not dissented from by the majority of the bishops  
 of the dispersed churches: and his conclusive observation is  
 certainly just, viz. " That the obligation of an oath is on a  
 " point of morals the most important."

When such reasoning produces consequences so palpably in-  
 consistent with and contradictory to doctrines, that are professed  
 and maintained as supereminently and exclusively true, it behoves  
 us to examine the premises with more than ordinary accuracy.  
 I am one of many thousands who have sworn, that " I do  
 " reject and detest as an unchristian and impious position, that  
 " it



“it is lawful to murder and destroy any person or persons  
 “whatsoever, for or under pretence of their being heretics or  
 “infidels: and also, that unchristian and impious principle, that  
 “faith is not to be kept with heretics or infidels: and that I do  
 “renounce, reject and abjure the opinion, that princes excom-  
 “municated by the Pope and Council, or any authority of the  
 “See of Rome, or by any authority whatsoever, may be de-  
 “posed or murdered by their subjects or any person whatso-  
 “ever.”

BOOK II.  
 CHAP. VII.

But if a Roman Catholic believe, that a general council is in-  
 fallible in every thing, which it decrees upon matters touching  
 or affecting our consciences, then must he consequently believe,  
 that the third Lateran council was infallible and unerring in  
 decreeing\*, “That the subjects and vassals of the Albigenes,  
 “Brabanders, and other heretics, should be released and ab-  
 “solved from their oaths of allegiance to their respective sove-  
 “reigns: and that all those, who were engaged to them by any  
 “treaty, are not only exempted and freed from all oaths of  
 “allegiance, homage and submission to them, whilst they  
 “shall persist in their heresy; but even we enjoin them and  
 “all the faithful, for the remission of their sins, to resist coura-  
 “geously the ravages, which they make, and to defend by force  
 “of arms the Christian people against those impious miscreants,

Inconsistency  
 of the oath  
 with the de-  
 crees of the  
 third Lateran  
 council.

\* T. X. Conc. c. xxxii. p. 1522, 1525.



BOOK II. "and to confiscate their property: and we will, that their lords  
CHAP. VII. "reduce them to slavery." And in order to encourage the faithful to the pious crusade against these devastating heretics, they grant an indulgence of two years to those, who heartily engage in it.

Fourth Lateran council.

The like opinion must be formed of the fourth Lateran council under Innocent III. \* "If a temporal lord warned  
"and required by the church to purge his territory of heretics,  
"shall neglect to do it, he shall be excommunicated by the metropolitans and the other provincial bishops: and if he shall  
"neglect to give satisfaction within the year, it shall be signified  
"to the Pope, in order that he may declare the vassals of that  
"lord absolved from their allegiance, and deliver over his territories to Catholics, to possess them peaceably, and preserve  
"them in purity of faith: saving the right of the lord paramount, provided he make no opposition to the execution of  
"this decree. The same law is to be observed with respect to  
"those, who have no lord paramount." And in the same canon it is further decreed against heretics and their abettors†,  
"Nobody shall be obliged to answer them in a court of justice;  
"and yet they shall answer to others. If a heretic shall be a  
"judge, his sentences shall be null: if he be an advocate, he

\* Ext. Greg. ix. L. v. Tit. vii. Excommunicamus, Tom. xi. Con. p. i. p. 148.

† Ibid. 149.

"shall



“ shall be disabled to plead ; and if he be a notary public, all acts  
 “ and deeds attested and legalized by him shall be void.”

BOOK II.  
 CHAP. VII.

It is too clear, to stand in need of proof, that such powers as these councils undertook to exercise, were precisely the powers, which by his oath, every British Roman Catholic juror has abjured and renounced. But if the church of Christ ever possessed such powers, she must now possess them, and continue to possess them to the end of time ; for every attribute of the church of Christ has the essential adjunct of perpetuity annexed unto it : so if it were *one holy* and *catholic* in the beginning, so now is it, and so for ever will it be. The governors of Christ's church can neither acquire an augmentation, nor suffer a diminution of the power given by Christ to his apostles, which must have come to them (if at all) neither less nor more, than when first delivered by Christ himself. Either then the juror of the Roman Catholic oath must deny, that general councils are not *infallible and unerring* in all they decree concerning faith and morals, or that he has inconsiderately taken an oath, which was incompatible with his faith, and which he must therefore retract and recant ; for he cannot abjure and renounce the general power as unchristian, and at the same time admit the exercise of it in particular instances to have been just, valid and lawful.

The powers  
 of the Chris-  
 tian church  
 perpetual.

Let the truth then be frankly confessed, and be it admitted, that in these and many other instances, the general councils and church  
 governors.



BOOK II.  
CHAP. VII.

governors have exceeded their commission and power; and that it appears to have been permitted by the special providence of God, that whenever they have attempted to go beyond their charter and to assume a power and authority not given to them by Christ, they have exposed themselves to just blame and censure in the pretended exercise of their assumed powers: for I repeat it again, the power of the church to decide or declare upon doctrinal matter, to which Christ's promise of inerrancy attaches, goes not beyond the necessary declarations *concerning the Christian revelation*: and her right to impose discipline independently of the *civil* magistrate is confined to such purely *spiritual* or *ecclesiastical* discipline, as affects not the objects of the *temporal* power, so as to take them out of its jurisdiction, for thus there would be two sovereign powers over the same objects, which are repugnant.

Boundaries  
of the spiri-  
tual power.

As therefore no part of the Christian revelation concerns the rights and titles of temporal sovereigns to their thrones, and no spiritual discipline can alter human laws, which regulate and dispose of temporal property, and create obligations and duties in individuals, which they are conscientiously bounden to observe, therefore the church had neither authority nor power to decide or decree upon these subjects. The *power of the keys* extended not to these objects: the governors of the church therefore had no control or command over them; though convened in full council,



council, they were but men attempting to exercise an authority not given to them by Christ, and to judge upon matters not within the competency of their jurisdiction: they were consequently liable to err in their judgment, as no promise of infallibility was given by Christ beyond the ordinary missionary\* powers, which he gave to his apostles.

BOOK II.  
CHAP. VII.

If Christ gave not authority to his church to affect the *civil* magistrate, to dispose of temporal property, or to annul municipal laws, it is evident, that he could have imposed no obligation upon Christians to obey the church, when it attempted to exercise such powers. In all those matters, which our blessed Redeemer left to the power of his church, as he requires our submission, so has he given us the sure means of ascertaining the cases, in which we are to practise it. The kingdom of truth, or the system of Christianity, has nothing in common with the temporal kingdoms of this world, but in its being a *government*: the power, to which it is subject is neither derived from this world, *non est de hoc mundo*, nor does it embrace the objects of temporal or human power. I do not by this assert, that the same subjects may not be affected by the *civil* and *spiritual* power. Man, for instance, is subject to both, but indifferently affected by each.

Church has  
no power to  
dispose of  
temporal pro-  
perty, or to  
annul *civil*  
laws.

\* The miraculous powers and gifts, which the apostles enjoyed were necessary first to establish the Christian religion, but they are not so for its continuance and preservation, as we see by God's dispensation of them in the nascent church, and his withholding them generally since the church has been established.



## BOOK II.

## CHAP. VII.

The body is  
the care of  
the *civil*, the  
soul that of  
the *spiritual*  
power.

As a free, rational and social creature he is the object of the *civil* power; as he has a soul to conduct to eternal bliss, he is the object of the *spiritual* power: what relates to his and his fellow-creatures preservation, happiness and welfare in this world, is within the jurisdiction of the *temporal* power; what relates immediately to the means of his working out his salvation for the next life is within that of the *spiritual* power. Thus says Warburton\*, "We have shewn they were the "bodies not the souls of men, of which the magistrate undertook the care."

To what  
Christ's pro-  
mise extend-  
ed.

Temporal de-  
crees of coun-  
cils not by  
virtue of the  
power of the  
keys.

It is false reasoning to conclude, that because a thing has been declared, decreed or enjoined by church governors, therefore it is infallibly true, or conscientiously binding. The promise of Christ went only to assure us, that all church governors shall never at one and the same time give into error by teaching another doctrine, than what he himself revealed: and the power given to his church went only to impose such discipline, as tends to promote the eternal salvation of man. "Wherefore," says the great Bossuet†, "whenever in the decrees of councils we "find certain ordinances against heretics, which suppose a tem-  
"poral power, we must always admit, that although they have  
"been published in the name of the council, in order to inspire

\* Alliance of Church and State, p. 38, Hurd's edit.

† Défense de la Déclaration du Clergé de France, t. ii. l. ii. c. i.



“ more respect for religion, yet nevertheless they have had only BOOK II.  
 “ the force of law, inasmuch as they have been approved of CHAP. VII.  
 “ and ratified by princes.”

All these decrees of the Lateran councils, and such other as Lateran  
council.  
 were evidently upon subjects not within the commission or  
 charter given by Christ to his church, were, says this great  
 Prelate, not passed by virtue of the *power of the keys*, but ac-  
 quired their force and effect by consent of the temporal princes,  
 who attended in person or by their ambassadors at the coun-  
 cils, in which they were passed. Thus says Roger Hoveden,  
 speaking of one of these councils, which was holden in his time,  
 “ These decrees having been published, were received by all the  
 “ clergy and the people:” meaning by the term people, all the  
 laity there present. At this (Lateran) council were present the  
 Patriarchs of Constantinople and Jerusalem, and those of Antioch  
 and Alexandria sent deputies: there were besides these, present  
 77 primates, 412 bishops, and above 800 abbots and priors, and  
 the ambassadors of most of the powers in Europe, which made  
 up the greatest council ever convened.

Nothing can become a law either *spiritual* or *temporal* but by  
 the act of the supreme or legislative power: no *civil* power can  
 make a *civil* law become a law of the church, nor can the *spiri-*  
*tual* power of the church impose a *civil* law upon the state. No mutual  
power of  
church and  
state over  
each other.

H h

These



BOOK II.  
CHAP. VII. These acts of general councils, which are passed upon objects not within the competency of their jurisdiction, are essentially null and void as *spiritual* laws of the church: and if they have any force as *temporal* laws, it is by virtue of the consent of temporal sovereigns: nor can their force extend to the whole church of Christ; for the effect of every *civil* law is essentially commensurate with the jurisdiction of the legislators, whose act it is. Thus the consent of the Emperor could impose no obligation upon the subjects of this country to admit these decrees as laws of England, nor could deputies from our parliament and all Europe give force to such decrees over the subjects of Ethiopia or China: they are improperly then called decrees of a general council, or *spiritual* laws of the church, though anathema be pronounced against the violators of them. If they have any force or effect at all, they are mere *civil* laws of those states, whose sovereigns have, by their consent, admitted them into the code of their municipal laws.

One state  
cannot bind  
another.

Bossuet is very warm in endeavouring to enforce the binding obligation of these several decrees of the third and fourth Lateran councils; not indeed as obligatory precepts or infallible laws produced by the unerring *power of the keys*, but as *temporal* laws passed by the consent of the generality of Christian sovereigns, and therefore acquiring force and efficacy and compulsive obligation throughout all Christendom. As each separate  
civil



civil community is essentially independent of all other civil communities, so it possesses complete sovereignty or supremacy of power within its own jurisdiction. The republic of Ragusa cannot be bounden by the unanimous consent or determination of every other civil State in Europe. Now to apply this reasoning to these decrees of councils, it must be admitted, that in point of doctrine, that is, when the council undertakes to declare what Jesus Christ taught, as a part of the revealed religion, which he established upon earth, such decree or determination, according to Roman Catholic doctrine, must unexceptionably and indispensably command the submission of every Christian throughout the universe, independently and even in defiance of all the *civil* powers upon earth: and when by its own intrinsic power, received through the successors of the apostles from Christ himself, the church imposes *spiritual* or *purely ecclesiastical* discipline, the *civil* power can neither give it force or obligation by concurrence, nor diminish or defeat its efficacy or effects by resistance or prohibition. The Church and State are totally independent of each other, and the act of either is absolutely produced without the aid, and may be produced without the privacy of the other.

BOOK II.  
CHAP. VII.

Independen-  
cy of the *spi-*  
*ritual* and  
*civil* power  
upon each  
other.

I am sensible that the following argument is not only often urged against Roman Catholics by their opponents, but is as frequently supported and maintained by some Roman Catholics themselves. Church authority demands unconditional submission

Inconclusive  
argument for  
submission to  
every com-  
mand of  
church go-  
vernors.



BOOK II.  
CHAP. VII.

tion: but I know by revelation, that the church is holy and infallible; therefore whatever it commands and enjoins is to be believed and submitted to without question, doubt or resistance. Consequently any act of private judgment, which produces doubt, or tends to resistance against any thing, which the church has, or may at any time declare or enjoin, is contrary to the duty and obligations of a Christian, because it is offensive to God. In the declaration signed by above 1500 English Roman Catholics in the year 1790, and now deposited in the British Museum, this obligation is fairly stated; but, with submission to the framers of it, I cannot think, that it is fully answered. I shall repeat what is contained in the declaration upon the subject, and shall then subjoin what further answer, in my humble conception, should have been added to it. \* “ We have also been accused of  
 “ holding, as a principle of our religion, that implicit obedience is  
 “ due from us to the orders and decrees of Popes and General  
 “ Councils; and that therefore, if the Pope, or any General  
 “ Council, should, for the good of the church, command  
 “ us to take up arms against government, or by any means to  
 “ subvert the laws and liberties of this country, or to exterminate  
 “ persons of a different persuasion from us, we (it is asserted  
 “ by our accusers) hold ourselves bound to obey such orders or  
 “ decrees on pain of eternal fire.

Declaration  
of the Ro-  
man Catho-  
lics deposited  
in the British  
Museum.

“ Whereas we positively deny, that we owe any such obedi-

\* Case stated, p. 61, 62, 63.

“ence



“ence to the Pope and General Council, or to either of them: BOOK II.  
“and we believe, that no act that is in itself immoral or dis- CHAP. VII.  
“honest can ever be justified by, or under colour that it is done  
“either for the good of the church, or obedience to any eccle-  
“siastical power whatever: we acknowledge no infallibility in  
“the Pope; and we neither apprehend nor believe, that our  
“disobedience to any such orders or decrees (should any such  
“be given or made) could subject us to any punishment what-  
“ever: and we hold and insist, that the Catholic church has no  
“power that can, directly or indirectly, prejudice the rights of  
“Protestants, inasmuch as it is strictly confined to the refusing  
“to them a participation in her sacraments, and other religious  
“privileges of her communion, which no church (as we con-  
“ceive) can be expected to give to those out of her pale,  
“and which no person out of her pale will, we suppose, ever  
“require.

“And we do solemnly declare, that no church, nor any  
“prelate, nor any priest, nor any assembly of prelates or priests,  
“nor any ecclesiastical power whatever, hath, have, or ought to  
“have, any jurisdiction or authority whatsoever within this  
“realm, that can, directly or indirectly, affect or interfere with  
“the independence, sovereignty, laws, constitution, or govern-  
“ment thereof, or the rights, liberties, persons or properties of  
“the people of this realm, or of any of them, save only and  
“except



BOOK II. "except by the authority of parliament; and that any such  
CHAP. VII. "assumption of power would be an usurpation."

Deficiency of  
the answer.

This answer states the truth, but it accounts not for the reason of it; nor does it shew, in what instances and in what manner it applies to existing circumstances: it therefore leaves unanswered the forcible reply of those, who press this objection, viz. that the church being by divine institution *infallible and holy*, its governors in full council cannot in fact and reality declare false doctrine or enjoin immoral or improper practices. To presume therefore that they can do it, is absolutely an impossible supposition; and carries with it this irresistible consequence, that whatever the governors of Christ's church have actually declared is infallibly true, and whatever they have enjoined to be performed is indispensably obligatory.

That church authority demands unconditional submission is universally true; but it is equally true, that church authority is not unconfined, nor does it extend to every possible object, that may indirectly affect the consciences of men. Such Roman Catholics as have signed the declaration are thereby expressly bounden (as is generally every Roman Catholic who has not signed it) "to support and maintain, that no act that is in itself  
"immoral or dishonest can ever be justified by or under color  
"that it is done either for the good of the church, or obedience



“to any ecclesiastical power whatever.” Those who have BOOK II.  
CHAP. VII. taken the oath before mentioned, necessarily believe and hold that, which they have thus solemnly abjured and renounced as impious and unlawful, to be *immoral* and *dishonest*: and they have declared it to be “unchristian and impious to “murder or destroy any persons for or under pretence of their “being heretics: and that it is an *unchristian* and *impious* principle that *faith is not to be kept with heretics.*” These are universal propositions, which exclude their negation in every possible case; for no man can swear generally to reject and abhor these positions as unlawful and unchristian, if in any instance it could be rendered lawful or laudable to murder or destroy persons for or under pretence of their being heretics; or that our faith and civil engagements made with heretics could in any possible case be made to cease or become null upon the same pretext or account.

The Roman Catholic oath repugnant to the admission of the Lateran decrees.

Every Roman Catholic as necessarily believes the holiness as The church  
equally *holy*  
as *catholic*. the unity and catholicity of the church of Christ: she therefore can no more have countenanced, directed or enjoined what is *unchristian and impious*, than she can have taught error as a part of the Christian revelation. Now he, who has upon oath abjured and renounced these propositions as *impious and unchristian*, has before him full *human* evidence, that the third Lateran council holden by the Catholic church, was a general or œcumenical council of the governors of Christ's church; and that they decreed



BOOK II. decreed expressly, that all "those who are engaged to them  
 CHAP. VII. " (the Albigenian heretics) by any treaty or engagement,  
 Evidence of " are not only dispensed with their oaths of allegiance,  
 the council. " homage and obedience to them, whilst they persist in their  
 " heresy (*dum maneat heresis*); but we also enjoin them and  
 " all other faithful, for the remission of their sins, to resist cou-  
 " rageously the ravages which they make, and to defend, with  
 " force of arms, the Christian people against these impious per-  
 " sons, to confiscate their property, and we will that their lords  
 " reduce them to slavery." The juror has the like evidence  
 of the fourth Lateran council, which expressly decreed, that  
 " if a temporal lord, warned and required by the church to purge  
 " his land of heretics, neglect to do it, he shall be excommuni-  
 " cated by the metropolitan and other bishops of the province:  
 " and if he give not satisfaction within the year, the Pope shall be  
 " informed, in order that he may declare the vassals of the lord  
 " absolved from their oath of allegiance, and that he may deliver  
 " his territories to the conquest of Catholics, to take and possess  
 " them peaceably after having exterminated the heretics, and to  
 " preserve them in the purity of faith."

Every Roman  
 Catholic  
 obliged to ex-  
 amine the  
 grounds of  
 his submission  
 to the decrees  
 of these coun-  
 cils.

Now no professed member of the Roman Catholic church  
 can remain in perfect passive neutrality concerning these and  
 such like decrees of general councils, or of *church governors*; for  
 either he must believe them binding, or not binding: if they be  
 binding, it is his duty to believe and submit to them; if they be

not



not binding, there must be some reason for it, and this must be within the knowledge of the person, who is either to submit to or dissent from them. The absolute abjuration upon oath of any power upon earth being capable of doing that, which it is in evidence was done or attempted to be done by these two general councils, renders it emphatically necessary, that this objection should be fully and clearly done away.

BOOK II.  
CHAP. VII.

It is urged in support of the necessary submission to church authority, that private judgment must yield to every act or decree of the church fully represented by the assembly of all its pastors and governors; for as we believe the church to be *one, holy, catholic and apostolical*, therefore every decree of the church must be infallibly true, and every act of it essentially just.

I have before said, that the *indefectibility* and *infallibility* of the church rest not upon human grounds, but upon the *promise* of Christ: but that promise extended not to verify or justify every decree and act of the governors of his church; but only that they should not all at one time fail, or at any time teach error as his revelation. These decrees of the two Lateran councils are evidently acts of the governors of the church there assembled: they are delivered in their name, *We enjoin, &c*; the faithful who resist them are *anathematized*, they are encouraged to observe them for the remission of *their sins*, and are rewarded

The decrees of the Lateran councils cannot be civil or temporal laws.



BOOK II. for their obedience to them by *two years' indulgence*: they are  
CHAP. VII. therefore evidently not passed or pretended to be passed as  
*temporal* or *civil* laws either of nations or particular states;  
 they must then be considered, as they were intended by the  
 framers of them, acts of the *spiritual power*, or laws of the  
 church, which must necessarily have been passed by the *spiritual*  
*legislators*, who are the governors of the church: if in this light  
 they be not binding, it must be either from the nature of the  
 laws themselves, or from the incompetency of the legislators to  
 enact them.

Christ gave no power to his apostles over the use or dominion  
 of temporal objects: the civil and spiritual powers could not be  
 both supreme, if they were not independent of each other; but  
 if they be independent of each other, they cannot embrace or  
 extend to the same objects; for if the spiritual power could in  
 any manner affect the possession, use, right, transfer or domi-  
 nion of property, then would it interfere with the temporal power,  
 which has the exclusive regulation and disposition of it, as *pro-*  
*perty* is essentially the creature of the civil power. As Christ

Apostles had  
 no power over  
 temporal ob-  
 jects.

therefore gave no power to his apostles over temporal objects,  
 his ambassadors, who are the church governors, as successors of  
 the apostles (*pro Christo legatione fungimur*, 2 Cor. v. 20) can-  
 not have any right to make laws concerning them; therefore *all*  
 such laws made by the church governors are essentially null and  
 void.



void. But the grand and conclusive question upon the whole is, BOOK II.  
CHAP. VII.  
*Who is the judge of their nullity?*

Certainly not they, who passed them; for if they thought them null, they would not have pretended to enact them, and the actual enacting of them is the act of their exceeding their powers, and this excess makes them null. Every individual Christian therefore, who has the use of reason and is called upon to obey or dissent from the law, is the competent and conclusive judge of the object of it; that is, whether, if declaratory, it be concerning some point of Christian revelation; if enjoining discipline, it be purely of a *spiritual* nature. \* Thus speaks a very solid and accurate Roman Catholic divine, who entered the lists against the great Chillingworth: "No one is to be obeyed against evidence, of which every one, who has the use of reason is a competent judge: for what is it to be evident? It is to be so plain, that every one who has the use of reason can see it." p. 48. And, p. 40, "Nothing is to be believed against evidence. The universal church is infallible, that is, always orthodox in deciding controversies of religion, as the apostles were infallible in preaching the gospel after they had received the Holy Ghost: but how infallible soever, they were not to be believed against evidence. They were not therefore to be believed, if they had said that black is white, that white is

No one to be  
obeyed  
against evi-  
dence.

\* Wit against Reason, or the Protestant Champion the great the incomparable Chillingworth, not invulnerable. B. H. C. 1735.



BOOK II. "black; that virtue is vice, and that vice is virtue; that Christ  
 CHAP. VII. "is Antichrist, and that Antichrist is Christ." The general inference therefore from what I have said is, that every Christian is conscientiously bounden to believe all the decrees of the church concerning the Christian revelation, and to observe all the *real spiritual* or purely *ecclesiastical discipline*, which she may impose upon its members under every possible variety of circumstances: yet, as it is in evidence, that church governors have sometimes exceeded the powers given to them by Christ by attempting to legislate over objects, that were not of their competency, there is in the breast of every rational being a ground and rule of evidence, by which he must distinguish between the objects of the *civil* and the *spiritual power*; and by such internal evidence alone can he determine his practical duty of obedience and submission.

From what I have said upon this subject, it is evident, that I fully admit not only the truth of the Christian revelation, but also that Christ has promised to his church to direct and guide her, whenever, as my Reverend Correspondent *rightly* expresses himself (p. 193), "she declares certain articles to have been primitively revealed to the Apostles by Jesus Christ." It necessarily follows, that I submit unconditionally to such decrees, whenever they are made. Now the conscientious obligation of this submission presupposes the knowledge of the general nature of the command, order, or decree, which is to be obeyed or submitted



to. I presume therefore, when an all-wise being has imposed a specific duty upon a rational creature beyond the obligations of the law of nature, that he has enabled him by the light of nature to discover all the circumstances, under which that specific duty binds the individual. By the light of nature, which may in one sense be termed the promulgation of the law of God to each individual, every human conviction is effected; that affording the internal evidence, upon which the judgment of the mind is formed: but it suffices not of itself to operate or force the belief of and submission to mysteries, of which it can produce no evidence. Man cannot therefore by the mere light of nature believe either the Trinity or the Incarnation, nor can he thereby know or discover, much less be assured of the divine inspiration of the canonical books of holy writ; but he is fully enabled by the light of nature to distinguish between those things or objects, upon which the laws of nature operate, and those which must necessarily have been revealed by God, in order to be believed by man. So the light of nature produces not the sacrifice of the judgment, or the submission of the intellects to the belief of incomprehensible mysteries; but it points out the occasions and circumstances, under which God calls upon the Christian to perform this duty by an act of divine faith. Hence follows an important corollary; that every human being possessing the free use of reason is thereby fully enabled to judge of the circumstances and occasions, under which God enjoins him to obey the *spiritual* or *ecclesiastical* authority of the church governors,

BOOK II.  
CHAP. VII.

The light of nature enables man to see the circumstances under which he is to submit to divine faith.



BOOK II.  
CHAP. VII.

nors, either by complying with the discipline, which they may impose, or by submitting his understanding to the revelations of Christ, which they may propound and declare.

If it be true, that inerrancy and irreformability have been promised by Christ to his church, whenever she propounds and declares what her blessed founder revealed, it is evident, that the duty of submitting to such declaratory propositions must oblige and bind every Christian universally and unexceptionably throughout the world. But the most scrupulous divine, not even my Reverend Correspondent will pretend equally to bind and oblige the consciences of all Christians by the commands and decrees of the church upon matters, which are not declaratory or explanatory of the Christian revelation: to such declaratory acts of the church I suppose and admit Christ's promise of direction, which imports inerrancy, to attach: as to other acts of the church, my Reverend Correspondent himself owns (p. 207) "in such matters of fact the church herself may err, as

What acts of  
the church  
are guided  
and directed  
by Christ.

"well as individuals." His reasoning upon this serious and important point is rather too curious to pass unnoticed: and I feel a conviction, that by exposing it to broad day-light, I shall materially forward the primary object of this work, which is to ascertain the true and real foundations, upon which every superstructure *civil* or *political*, and *spiritual* or *ecclesiastical* is raised. The examination of this argument is not only immediately relevant to the subject of this chapter, but preparatory also for the further



further lucubrations of the work, especially such as concern the immunities and temporal provision of the clergy.

BOOK II.  
CHAP. VII.

So unbounded in his eyes is the power of the church, that he makes it embrace every possible object, that is "not of itself evil, "and contrary to the law of God and Nature:" thus evidently taking in its range not only those things, which relate to the conduct of souls to eternal salvation, but also every possible object of *human* and *civil* power. The *spiritual* and *temporal* powers are both *sovereign* and *independent* of each other, because they essentially affect and control different objects. Unmeasurable confusion, folly, and mischief must be the unavoidable consequences of drawing all matters indifferently under the control and influence of the *spiritual* power. His *major* proposition is certainly a truism; p. 106: "What the law of God allows the church to command, she commands, when she judges it conducive to the end of her own government, which is the benefit of religion." His *minor* proposition is to be absolutely denied. "But we know  
"from the promises of Christ, that it is not in her power to com-  
"mand a thing evil in itself, or what is contrary to the natural  
"or divine law." It would have been true had he asserted, that we know from the promises of Christ, that his church shall not err in propounding and declaring the Christian revelation. And it is also true, that it is not in the power of the church to command what is in itself unlawful or contrary to the natural and divine law; that is, it cannot impose a conscientious obligation.

False reason-  
ing upon *spi-*  
*ritual* power.



BOOK II.  
CHAP. VII.

gation of obeying such commands. But I know of no promise of Christ, that ensures the church governors from attempting to command things “evil in themselves and contrary to the natural and divine law.” Every man, who has taken the late oath prescribed to the Roman Catholics of this realm, has sworn that it is unchristian and impious to murder and destroy any persons for or under pretence of their being heretics, and to violate our faith with them: but these very acts were commanded by the œcumenical Lateran councils, as we have before seen; and it cannot be questioned, whether that, which is impious and unchristian be not *evil in itself and contrary to the natural and divine law*. —We must now mark his consequence. “Whence it is justly concluded, that the immunity of the clergy is not such.” I heartily join in the concluding proposition, that the immunity of the clergy is “not evil in itself or contrary to the natural and divine law:” but this truth flows not from his premises. The monstrous latitude, to which this reasoning runs must alarm and overwhelm every man, that reflects upon his obligation of submitting to the *spiritual* authority of the church of Christ. This broad criterion of the lawfulness of the command, consequently of the obligation of submitting to it, leaves no line of demarcation between the injunctions of *civil* and those of *spiritual* authority. It is the common rule of every *temporal* law: it is transcendently the exclusive quality of every command of *spiritual* authority. No Christian can be so impious as to suppose, that God has commanded him to submit to error: I infer then, that the ordinance

The lawfulness of the thing commanded too wide a criterion of the extent of the *spiritual* power.



of Christ to hear his church can apply only to submission in those things, in which he has promised to guide and direct her till the end of time: such are matters of the exclusive competency of *spiritual* jurisdiction, which are only to be known and ascertained by the nature of the objects, which it can affect. As every Roman Catholic believes, that the direction and assistance of Christ was promised to the church in propounding and declaring his revelations, so must he conclude, that upon this divine promise is founded the obligation of hearing and submitting to her commands; but from the instant that it is admitted, that the church "may err" in giving a command, from thence he concludes, that the particular command, in which she may so err, cannot be within that commission and charter, to the execution of which Christ promised his presence, and consequently his sure guidance to the end of time. My Reverend Correspondent, speaking of ecclesiastical immunities, says, "Whether the church Acts in which the church may err. has always used this power with discretion, and never enforced her commands beyond the rules of prudence, I do not pretend to examine, for in such matters of fact the church may err as well as individuals." (p. 207) Now in the supposition, that the church has commanded such immunities to be allowed to all clergymen, how is the Christian, who believes (rightly) that he is bounden to obey in every thing, in which the church has a right to command, to form his conscience and square his conduct? By the light of nature he receives full conviction, that the enjoyment and deprivation of temporal property and other *civil*



BOOK II.  
CHAP. VII.

advantages make no part of the revealed system of Christianity, consequently are not objects of the declaratory expositions of that revelation, in which Christ promised to guide his church. "In such matters the church may err as well as individuals." Such commands are not therefore terms of communion with the church of Christ, to which every dutiful child of the Catholic church is obliged to submit; in other words they cannot be necessary articles of Catholic belief; for from such no member of the church can be exempted, and to these all are evidently not obliged.

Wickliffe's  
condemned  
proposition  
about tempo-  
ral lords rights  
of disannex-  
ing church  
property.

Upon this same principle is to be treated the condemnation of John Wickliffe's 16th Article "That temporal lords can at their pleasure take away temporal goods from the church, when the possessors are habitually delinquent, that is, if they fail not only by a single act, but from habit." I shall endeavour to prove hereafter, that as all temporal property was from the beginning under the control of the *civil* magistrate, and the introduction of Christianity operated no change in his rights, powers and duties, so the exclusive dominion and control over it could not have been taken from the *civil* magistrate by any earthly power or acts of communities or individuals. The censure of my Reverend Correspondent upon me for maintaining this principle is, I hope, more decisive than just, (p. 223.) "The reformer of the fifteenth century alledged at least some colourable pretext for his doctrine, viz. the habitual delinquency of the possessors; but I do



“ not recollect that in your *Jura Anglorum* you assign any, and  
 “ therefore your principle being more unlimited, must of course  
 “ be *more diverging from the Catholic truth.*” In whatever I have  
 hitherto said, and in whatever I may hereafter say, I sincerely  
 wish and intend to speak in strict unison with Catholic  
 orthodoxy.

BOOK II.  
 CHAP. VII.

Before I enter upon the immediate enquiry into the origin,  
 grounds, and nature of church property, I shall throw out some  
 cautionary observations upon certain reflections, that have been  
 communicated to me upon my general principle, that all property  
 is essentially the creature of the *civil* power, and therefore, that the  
 paramount dominion and transcendent right of its appropriation  
 must for ever remain with the CIVIL magistrate, or legislative  
 power of each community. The direct inference from this prin-  
 ciple, that the “ *altum dominium* of temporal property cannot be  
 “ transferred to the *spiritual* power,” is asserted by my oppo-  
 nents to be contrary to the faith of a Catholic, who is bounden  
 to reject as error every opinion and doctrine condemned by the  
 church as false, wicked, or heretical. Amongst these are some  
 errors of John Wickliffe, who held, “ that ecclesiastical ministers  
 “ should not have any temporal possessions, or property in any  
 “ thing, but should beg\*.” The converse of this proposition

Misconcep-  
 tion of Wick-  
 liffe's doc-  
 trine.

\* Of this opinion of Wickliffe, Oslander, a Protestant author, thus speaks:  
 (Epit. Hist. Eccles. Centur. p. 459. Art. 43.) “ Illa Wiclevica superstitio per-  
 “ nitiosa et seditiosa est, quæ adigit ministros ecclesiarum ad mendicitatem, et  
 “ negat eis licere proprium tenere.”



BOOK II. is evidently true, and must be so believed by every man, who  
 CHAP. VII. holds that the spiritual power can produce no *civil* effect upon any human individual. The ordination of a priest or deacon, which is conferred by the imposition of hands by a bishop, or the *spiritual* jurisdiction given either to a parish priest or prelate, by the act of institution or confirmation would produce a *civil* effect, if it disabled the party ordained, instituted, or confirmed to possess *property* in any thing, or induced a conscientious obligation of living upon alms. No man of common sense or honesty can so distort the meaning of this assertion of Wickliffe, as to infer from its falsity the truth of these propositions, that the church may acquire and enjoy the *altum dominium* in lands and temporal goods, or that when once such things have been so appropriated or consecrated, the property becomes perpetually and indefeasibly unalienable, and totally withdrawn from the power, control, and interference of the *civil* power. Into this important and grievously misconceived point I shall now proceed to enquire.

In whatever I have said in this chapter, I wish not to be considered to have attempted to start, prove or establish any *theological* opinion or doctrine upon the submission, which every Christian is bounden to pay to the decrees of the church of Christ. As a Roman Catholic I profess to believe, that Christ promised to abide with his church and guide her in all truth to the end of time. In this belief I find nothing to counteract or interfere with my *civil* obligations as a member of the British constitution;



stitution; and as I neither can believe by proxy, nor perform my civil duties by deputy, I have endeavoured to state to the public the real grounds and principles, upon which I have formed my conscience in discharging my duties both to church and state; I neither wish to influence nor presume to dictate to others: but having been publicly arraigned by my Reverend Correspondent, p. 25. "for having imbibed notions, as well as adopted a language irreconcilable with the truths of my religion," I have felt it my duty to develop and manifest to the public, the line of duty, which my reason has suggested, and my feelings have prompted me to pursue. It may be the province of the Divine to discuss the specific nature and operation of the decrees or declarations of the church: but the light of nature must operate the conviction on each individual's mind, whether the object of the decree be a part of the Christian revelation or not: if it be so, the submission of the understanding to the declaration of the church upon it is mandatory upon every Christian, and his submission is an act of divine faith. Whoever believes in the promises of Christ to preserve his church from teaching error, must necessarily believe, that any declaration or decree of church governors collectively or individually, that presupposes error or injustice, or counteracts known truth either directly or indirectly, was an act passed either by such person or persons as were not the full and fair organs of Christ's church, or that it was intended to affect an object out of their resort or competency. Thus, to revert to the decrees of the  
Lateran



BOOK II.  
CHAP. VII. Lateran councils before alluded to, I, who have solemnly fore-  
sworn the deposing, dispensing, and even indirect temporal power  
of the church, as well as of the Pope, must have perjured myself  
if I then believed the things lawful, which was enjoined to be  
done, and for the doing of which *spiritual* rewards were granted  
by the Fathers of those councils: for evidently those decrees  
presupposed the following errors, *viz.* that the *civil* power of  
*temporal* princes depended upon the *spiritual* power of the  
church of Christ; that the immorality of the sin of heresy was  
a lawful ground for breaking faith entered into with other hu-  
man beings, that the validity of *civil* actions proceeded not from  
the *civil* magistrate, but from the *ecclesiastical* or *spiritual* power:  
and they diametrically counteracted those truths, which by my  
oath I have called upon the Deity to witness. I not only there-  
fore reject and refuse submission to the doctrines presumed and  
imported by these decrees, as well as to the decrees themselves; but  
I hold myself conscientiously bounden, not only upon general  
principle, but by the tenor of my oath, to confide in the promise  
of Christ, that *his church* neither has nor will declare, as a part  
of his divine revelation, any proposition, upon the truth and  
justice of which, these particular, or any such decrees could be  
rendered valid and obligatory upon the consciences of Chris-  
tians.

END OF THE SECOND BOOK.



## E N Q U I R Y

I N T O

THE ORIGIN OF  
ECCLESIASTICAL AND CIVIL AUTHORITY.

## B O O K I I I.

OF THE CIVIL ESTABLISHMENT OF THE EPISCOPALIAN PRO-  
TESTANT RELIGION IN ENGLAND.

## C H A P. I.

## I N T R O D U C T I O N.

IF there never had existed a *civil* establishment of the Christian religion, our ideas of the *spiritual* and *temporal* powers would not have been confused, but clearly and distinctly marked. During the three first centuries of Christianity the true religion was generally persecuted by every State, but never sanctioned or supported by any; an irrefragable argument, that *civil* sanction was neither necessary for the establishment nor the continuance of Christianity.

BOOK III.  
CHAP. I.*Civil sanction unnecessary for the Christian religion.*



## BOOK III.

## CHAP. I.

nity. Respectable and learned authors have thought, that *civil* establishments are hurtful to the real interests of religion: I shall not attempt to prove, that they are serviceable to them. As the English constitution always did give a *civil* sanction and establishment to the Christian religion, which forms a species of agreement or *concordatum* between the church and state, it will be my remaining task to consider and explain more in detail the origin, nature and effects of the civil establishment, by which the Episcopalian Protestant religion is now supported and maintained in England.

Ecclesiastical  
revenues, ec-  
clesiastical  
courts, and  
king's supre-  
macy.

The civil establishment of this religion in England will direct my enquiries to three principal heads, *viz.* of *ecclesiastical* revenue or property, *ecclesiastical courts*, and the *king's supremacy*. Having undertaken to speak of each of them in my *Jura Anglorum*, I feel myself now called upon to add so much upon these subjects, as will suffice to elucidate what in that book may be obscure, to rectify what may be incorrect, and explain what has been misunderstood or misrepresented. In fact if my other readers have the same or as great objections against what I have said in my *Jura Anglorum* as my Reverend Correspondent, the public has an irresistible demand upon me for explanation, apology and retraction. In page 110, he points out "where I appear to be inconsistent to the character of a Catholic, which I profess, *viz.* in making the canon law dependent on the authority



thority and will of the temporal legislature, and in attributing  
 “to the rulers of the realm powers over the church and its pro-  
 “perty, which God never granted them.” And (p. 5.) he tells  
 me, “It is not therefore your support of an established govern-  
 “ment, in what it is authorized to maintain, that I blame or re-  
 “gret; but the means you have used to support it, and the  
 “essential sacrifices, which you have made of your own and  
 “others unalienable rights in enhancing the cause you under-  
 “took to defend.”

BOOK III.  
 CHAP. I.



## C H A P. II.

## OF TYTHES AND OTHER CHURCH PROPERTY.

*Property the Creature of the Temporal Power. The History of Ananias and Sapphira. Nature of Property in general. Church Property. Canon Law. The Church of Christ incapable of receiving Property. Obligation of Canon Law. Conscientious Duties of the Civil Magistrate. The Evangelical Precept of providing for the Ministers of the Gospel. Abbey Lands. Disappropriation of Ecclesiastical Property in France. Nature of Sacrilege. Divine Right of Tythes. Opinions of the Fathers and Councils upon Tythes. Mr. Burke's Ideas of Church Property. The Altum Dominium of all Church Property in the State. St. Thomas and other Divines hold Tythes not to be due jure divino. What the Tythes of the London District according to strict tything might amount to. Ecclesiastical Immunities. Nature of the Bulla Cœnæ.*

BOOK III.  
CHAP. II.  
Revenues of  
the clergy.

THE first, and in some senses the most important effect of a civil establishment of religion, is the provision or revenue allotted to and settled upon the clergy or ministers of that religion as their fixed estate. My Correspondent's idea of God's not having granted any power to the rulers of the realm over the church

or



or its property, imports the strongest necessity of fathoming this important matter to the bottom. I enter upon the arduous task with a strong desire of developing the truth, and under a powerful conviction of the necessity of its being disclosed: but I will not boast of my expectations, that the truth will please all, though I know it can be detrimental to none.

BOOK III.

CHAP. II.

The *church of Christ* being a visible body or society of the believers in his doctrines governed by the successors of the apostles, could never have acquired in its aggregate or corporate capacity any attribute, right, or power, which Jesus Christ did not give to his apostles to be perpetuated through their successors till the end of time. Whether therefore I speak of the powers of the church as possessed and exercised by the apostles themselves after the ascension of Christ into heaven, or by the bishops of that same church in the 18th century of the Christian establishment, it is one and the same thing: the whole power they have is derived from the same source, is of the same nature, extends to the same objects, is communicated to them by the same means, and produces the same effects \*; it is *spiritual* and not *temporal*.

Perpetual  
identity of  
power in the  
church.

The

\* I speak not of the miraculous and supernatural powers, with which the apostles were gifted: though God chose to use these means for the first establishment of Christianity, he did not find them necessary for its continuance: they are not essential to the apostolic functions and powers; and when God pleases



BOOK III. The *indefectibility* of the church must convince all Christians,  
 CHAP. II. and its *infallibility* those who hold it, that the *spiritual* power  
 can extend to no object at present, to which it did not extend  
 1700 years ago: that it is now equally independent of the *tempo-  
 ral* or *civil* power as it then was, and can interfere no more at  
 present, than it then could with the *civil* laws of any commu-  
 nity or government whatsoever.

Human pro-  
 perty.

Every man, who has the use of reason, has full evidence, that  
 the possession, transmission and use of property, is the immediate  
 object of *civil* or *human* legislation: it is given, regulated and  
 transmitted in every State in some different manner: it is so  
 essentially the creature of the *civil* legislature, that where there  
 are no laws, there can be no property. Temporary occupancy may  
 give a temporary use, but no permanent dominion, which alone  
 constitutes property. It is consequently evident, that the possession,  
 transmission, use or application of property in any particular  
 State cannot be affected, but by an interference with the laws  
 of that State. But if the power given by Christ to the apostles  
 to teach all nations invested them with a right to alter, model,  
 resist, repeal, or frustrate the respective municipal laws of the  
 different nations, to which they were commissioned to preach the  
 to bestow them, as he has in some cases since the primitive days of Christianity,  
 they produce no alteration either in the ordinary powers of the governors, or  
 obligations of the governed.

revealed



revealed word of God, then would Christianity have wanted one of its essential qualities, which is its universal aptitude to every possible form of *civil* government. Every Christian therefore, who reflects upon this subject, must necessarily conclude, that the *spiritual* or *ecclesiastical* power (which alone the church possesses) can make no law whatsoever, that can vest, divest, transmit, apply or dispose of *temporal property*. In whatever instance therefore the church, or church governors, undertake to do it, they exceed the powers given to them by Christ, and encroach upon the *temporal* or *civil* power of the State, which must cease to be supreme, if it can be controled; and if it be not supreme, it will cease to answer the ends of society and government, for which God instituted it from the beginning.

BOOK. III.  
CHAP. II.

Absolute sovereignty of human power.

My Correspondent appears to lay much stress upon the exemplary punishment of Ananias and Sapphira, when he undertakes to prove, p. 221, that *donations granted by the faithful, either for the poor or other religious services, are made sacred and inviolable*. By this I presume he would infer, that the property given for these purposes, becomes from the moment of the gift the property of the church, and is thereby transferred from the control of the *civil* or *temporal* to that of the *spiritual* or *ecclesiastical* power. Now the very possibility of such a transfer, according to the principles, which I have endeavoured to establish, is absolutely to be denied: I admit that the unauthorized disappropriation of such property by an individual is sinful, because

Impossibility of property coming under the control of the *spiritual* power.

it



BOOK III. it is a breach of the commandment of God, *Thou shalt not steal.*

CHAP. II. But I must think, that my Correspondent has been very inatten-

Punishment of Ananias and Sapphira. tive to the lecture of this history of Ananias and Sapphira, if he pretend from it to establish the possibility of the church's possessing or disposing of temporal property, or even to prove, that they were immediately punished for *defrauding only a part of what they had offered to the Lord on such accounts*, as he asserts, p. 222. This history of Ananias and Sapphira being frequently resorted to by the advocates for the absolute inalienability of church property, I shall take the liberty to submit some observations upon the simple narrative, as it is recorded by the sacred penman.

Voluntary poverty in the primitive Christians.

The subject is introduced by the observation, that “the multitude of believers had but one heart and one soul; neither did any one of them say, that of the things, which he possessed, any thing was his own, but all things were in common to them, (Acts iv. 34) for neither was there any one amongst them that wanted: for as many as were owners of lands or houses sold them and brought the prices of the things they sold and laid them down before the feet of the apostles.”

This practice of the primitive Christians in the nascent church was a species of voluntary poverty, by which the individuals renounced the property of their possessions and threw them into a common fund, upon which afterwards no separate personal claim



claim could be made by any individual, who had thus appropriated his fortune. But I trace not the most distant idea of a fund being thereby formed for the exclusive possession or property of the clergy, or applicable to the relief of the poor; for of these latter there could then be none in the church, whilst all things were enjoyed in common, and no one wanted.

BOOK III.  
CHAP. II.

No poor in  
the primitive  
church.

It is to be remarked that land, as a permanent species of property, was not even attempted to be vested in any one particular or any number of believers: but it appeared necessary first to convert it into money, which, by the laws of all states, every individual may receive and apply to any purposes, that are not hurtful to the state. "But a certain man named Ananias with Sapphira his wife sold a field, and by fraud kept part of the price of the field, his wife being conscious of it: and bringing a certain part of it, laid it at the feet of the apostles." My Correspondent attributes their punishment "to their having defrauded a part of what they had offered to the Lord;" that is, for having appropriated a part of this sacred fund to themselves. If the sacred text had merely narrated the facts and the punishment, we might perhaps have differed about the immediate cause of the punishment; but it particularly specifies the cause, for which they were punished. "Why hath Satan tempted thy heart that thou shouldest lie to the Holy Ghost, and by fraud keep part of the price of the field?" He is rebuked for *lying and fraud*, not for withholding a part of the money from those, who had any right

Real cause of  
Ananias's  
and Sapphira's punishment.



BOOK III.  
CHAP. II.

to claim it, but for attempting to pass off a fraud or cheat or deceit upon others, by assuming the merit of a larger voluntary contribution, than in fact he had made. It was not upon the score of "injustice in defrauding a part of what they had offered to the Lord," as the letter writer says: "for whilst it remained, did it not remain to thee? and being sold, was it not in thy power?" There could be no injustice then in withholding what was in his power?—That therefore was not the reason, for which he was punished, but for alledging falsely, that he had sold the field for less than he really had: for "about the space of three hours after, his wife also, not knowing what had happened, came in, and Peter said unto her, Tell me woman whether you sold the field for so much? and she said, Yea, for so much." St. Peter did not question her about the appropriation of the price of the field, nor about the act of embezzlement, but only as to the sum, for which it had been sold; for the *deceit, fraud, or lie* upon this matter had her husband been stricken dead. Finding her also guilty of the same lie, "Peter said unto her, Why have you agreed together to tempt the spirit of the Lord? Behold the feet of those, who have buried thy husband, are at the door, and they shall carry thee out. Immediately she fell down before his feet, and gave up the ghost." A most terrible and striking example of God's punishing *deceit, fraud, and lying*. St. Peter did not rebuke Ananias for stealing or disappropriating or disannexing the property either of God or man, but "thou hast not *lied* to man, but to God;" for the LIE, therefore, was he immediately punished:  
it



it was not for keeping a part of the price of the field, "being  
 "fold was it not in thy power?" It was for keeping it *by fraud*.

BOOK III.

CHAP. II.

Let examples and precedents be fairly and properly applied. I find in this example of God's severity nothing, that constitutes a difference between *temporal* property thrown into a common purse for the maintenance of a whole society indiscriminately, and any other *temporal* property made applicable to other purposes. But, says the letter-writer, "All those things, as our  
 "theologians teach, are the portion of God, as tributes and taxes  
 "are the portion of Cæsar." p. 222. Under this idea of church property being *the portion of God*, is every disappropriation of any part of it looked upon by some persons as *unlawful, sinful, and sacrilegious*, because the property itself is sacred and inviolable. This misconception wants much to be cleared up.

Grounds of  
 -ing pro-  
 perty.

In tracing the title and establishing the right to any property, whether it be real or personal, moveable or immoveable, it is essentially requisite to consider first the nature of the property itself; secondly the means of transmission; and thirdly the quality, aptitude, or capacity of the persons, who convey, and of those, to whom the property is conveyed, or, as they are technically called, the donors and donees. By property I understand the right, use, and possession of matter or substance, by which one individual excludes every other from the right, use and possession of that same matter or substance, and enjoys moreover the faculty of transmitting it in like manner to others. The expe-

How to trace  
 the title to  
 property.



BOOK III.  
CHAP. II.

Grounds of  
private pro-  
perty.

diency, advantages and even necessity of property in the state of society arise not out of the nature of the matter or substance, which is the object of it, nor from any intrinsic or extrinsic quality or power in the nature of the possessor of it, by which he differs from those, who possess it not; nor are we to look into the particular *justice*, which a very learned and acute writer \* says, "is the criterion, that must determine, whether this or that substance capable of contributing to the benefit of a human being, ought to be considered as your property or mine." For it would be impossible to find out the *particular justice*, by which one man enjoys a large fortune and another is deprived of the necessary means of subsistence; by which the rich man is exempted from the punishment inflicted upon mankind, "in the sweat of thy brow shalt thou eat thy bread," whilst the poor labourer by that very sweat of his brow, can scarcely support himself and family. But an all-wise Creator having formed the earth to be inhabited and enjoyed by *social* man, has by the order of that same providence instituted the general necessity of private property for the preservation of society, in the same manner as he instituted the necessity of *civil* government; but as to the modes, forms and conditions of making the distribution of property, to the enjoyment of the few and the exclusion of the many, and of transmitting it to others even after death, all was left essentially to the will of each community. So it was upon the general ne-

\* Godwin's Political Justice, vol. ii, 789.



cessity of the thing, that God engrafted the commandment, BOOK III.  
CHAP. II.  
 “Thou shalt not steal.” That is, thou shalt not appropriate unto thyself any of that matter or substance, of which the laws of thy community shall vest the property in another. Every particle therefore of matter, which can by possibility be converted to profit or use, and any right of nomination, election, appointment, honor, dignity, or other incorporeal civil right, benefit or advantage, which can produce a price or value, will fall under the larger acceptation of the term *property*, which therefore is the immediate creature of the state. All property  
the immediate creature  
of the state.

No man can at this hour claim in this country a right to any property of a permanent nature, which he has not received by transmission or derivation from some other person, who preceded him in the right, use and possession of it. Transmission  
of property. All the means of acquiring property are instituted and established by the laws of each state. By our laws some sorts of property cannot be alienated at all by any act of the individual; but the law reserves to itself the sole operation of casting the descent of it upon a certain individual, under certain conditions, in a sort of perpetuity and regular succession. It now enables individuals to transmit by particular modes that property, which was before absolutely unalienable. Hence flows a general deduction, that there is no power upon earth, but the civil legislative power of each community, that can determine what shall be private property within that state, and how it may be acquired, enjoyed, possessed, transmitted and con-



BOOK III.

CHAP. II.

Criterion of  
what is pro-  
perty.

veyed to others. The sure criterion therefore, by which a Christian may determine what is private property, is to ascertain how far the act of appropriating it to one's self becomes an infringement of the commandment, "Thou shalt not steal." For the commandment can only in its nature apply to the violation of a *civil* law of the state: for such alone can constitute property. Thus, as I before observed, the conscience of the thief is immediately affected by the breach of the commandment of God, who can alone bind the conscience, not by the *civil* or *human* power of the state, which cannot of itself impose any binding quality upon the conscience.

Quality of  
donors and  
donees.

As property is essentially the creature of the civil legislative power, it follows, that the donors and donees of it must be ascertained and capacitated by it. The only condition, which is absolutely and indispensably a necessary quality in both is, that they should be subject to or resident in that state, by the laws of which they are enabled either to give and transmit, or to receive and enjoy the property. Since they receive their capacity or power of giving and taking property from a particular state, it is repugnant, that they should be wholly independent of that state, the laws of which actually operate upon them. Now as all *human* power is a delegation from the community, which constitutes it, it cannot extend to or in any manner affect members of another community, who joined not in that particular delegation. From these premises follows this negative consequence; that



that *property* is not an object of the *spiritual power*, which Christ gave to his apostles, for the purpose of establishing, governing and perpetuating his church, to which he promised existence till the end of time.

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CHAP. II.

Church lands and ecclesiastical property are so called, because they are appropriated by the state to holy and pious uses; not because they are taken out of the control of the *civil*, and transferred to that of the spiritual power: for that, as I have endeavoured to prove, is absolutely impossible. Of those persons, whom the laws of this country enable and capacitate to acquire, hold, enjoy and transmit property, some are so enabled in their individual, some in their corporate capacity. But whatever capacity or quality they acquire, which thus enables them to take, hold, or transmit property, from the *civil* power alone does it proceed.

Church  
lands.

The law of England at present knows not that *civil* death, which formerly it induced upon a person's entering into religion, by solemnly vowing obedience, poverty and chastity. All religious persons, men or women, were in their individual capacity totally incapable of taking or holding any property whatever. Yet the law allowed them, if they became superiors of houses, to take, hold, enjoy, transmit and defend all the property of their house or convent in their corporate capacity. At present all corporations, whether sole or aggregate, ecclesiastical or lay, are entitled

only

Civil death  
by religious  
vows.



BOOK III.

CHAP. II.

Corporate  
and indivi-  
dual capacity.

only in their corporate capacity to their property; but this corporate capacity prevents no man from taking property in his individual capacity; though a religious person was formerly incapacitated by law to do so. Religious vows and the *spiritual* acts of ordination and institution are not subject or liable to the control of the *civil* power: they consequently can receive neither validity nor effect from the state: yet the persons, who after these acts become either corporations or civilly dead, acquire their corporate quality or their *civil* death merely by the laws of the state. Thus formerly in England (as I presume it would also be at present) an alien might validly receive the episcopal order by consecration, and spiritual jurisdiction by confirmation, without thereby becoming capable of taking his seat in the house of lords: for I presume, that without an act of naturalization an alien bishop could not legally take, enjoy or defend the lands and revenues of his bishopric, nor become seised of the barony, by virtue of which he would become entitled to his seat upon the bench in parliament. The spiritual power then gives neither the property nor the capacity of taking or holding it\*.

Difference  
between par-  
ticular clergy-  
men and the  
church of  
Christ.

There is a wide difference between the state's vesting property in individual clergymen in a particular manner and under certain

\* An alien born being made prior of a convent might bring his action, because he did it *in jure domus* & *non in jure proprio*. Br. Ab. 214. quotes 39 Edw. III. though I have not found the case in the year book of the 39 Edw. III.



conditions, and the church of Christ acquiring the possession or dominion of property. If before the reformation, when the Roman Catholic religion was established in this kingdom, an eighth of the landed property of England belonged to the church, or, more properly speaking, to ecclesiastical or religious persons; yet no act of the Pope, even at the head of a council, composed of every bishop in the Christian world, could, in any manner, either appropriate, alienate, charge, incumber, dispose of, or affect one inch of the land, or one farthing of the revenue proceeding from it, or apply or settle it otherwise, than as it was fixed by the laws of the State: nor at present could all the bishops of England, in full convocation, by any canon, order, act or decree, in any manner affect the possession, use, enjoyment, disposal or transmission of the produce of the smallest living in the kingdom.

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CHAP. II.

The general  
governors of  
the church of  
Christ have  
no power  
over ecclesi-  
astical prop-  
erty in England.

Before I enter into a more detailed consideration of church property I cannot refrain from reminding my reader, that it is incumbent upon me to guard myself more particularly against the two last of the three heavy charges of my Reverend Correspondent, when he tells me, p. 110, "You appear inconsistent to the character of a Catholic; which you profess, and in which you have trespassed more remarkably. Your first \*inconsistency

\* I hope the reader will have been satisfied with what I have already said upon the subject of this first charge.

is



BOOK III.

CHAP. II.

“ is in approving the principles of the revolution, by which the  
 “ Catholic religion is banished for ever from this kingdom. The  
 “ second is, in making the Catholic canon law dependent on the  
 “ authority and will of the temporal legislature. The third, in  
 “ attributing to the rulers of the realm, powers over the church  
 “ and its property, which God never granted them.” No *spi-*  
*ritual* or *ecclesiastical* power upon earth can of itself make a  
 valid and binding canon law to affect in any respect a thing or  
 person, which in the same respect is an object of and can be  
 affected by the *civil* law: now all property moveable and im-  
 moveable, substantial and incorporeal, being the creature, is ne-  
 cessarily the object of the *civil* law. If then the canon law could  
 lawfully dispose of or affect property, or any other object of the  
*civil* or *temporal* power, it would be *dependent upon the autho-*  
*rity and will of the temporal legislature*; but it has no more power  
 over such objects, than the human legislature has over the soul,  
 conscience or other objects of *spiritual jurisdiction*; and the at-  
 tempt is an invasion and encroachment upon the *civil* magistrate,  
 without whom the whole code of canon law, that concerns  
 and affects *such* objects, is a blank letter. Christ gave no  
 power over property to his apostles; nor did he give any  
 thing like a promise, that their successors should not at any time  
 encroach upon, invade or usurp rights, which he never gave to  
 them; for this would be a species of impeccability, which the  
 most extravagant high-flying churchman has as yet never pre-  
 tended to assume.

Spiritual and  
 civil power  
 cannot affect  
 the same ob-  
 jects in the  
 same respects.

Canon law.

I have



I have no where *attributed to the rulers of the realm powers over the church*, as my Correspondent very falsely lays it to my charge, though I do attribute to them *civil* power, as well over all churchmen within the realm, as over all the property of such churchmen: the church of Christ, as a visible society, or spiritually incorporated body or collection of believers in the revealed truths of Christianity, is incapable of possessing property, which by its essential nature must for ever be under the control of *the rulers of that State, where the property is situated*.

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CHAP. II.

The donation or application of temporal property to pious uses by the State, or by individuals through the permission of the State, works no alteration in the nature of the two powers, or of the respective objects of either. \* “Le droit aux revenus est dans l’ordre civil & de la competence du prince. La consecration que l’on a faite de ces biens, ne les a pas tirés de sa jurisdiction, parce qu’elle n’a pas changé la nature des choses.” Upon the immutable quality or essential nature of *property*, I ground the absolute impossibility of its ever becoming the object of the *spiritual* power. The *civil* power may indeed offend against prudence, policy, and justice, in the use or exercise of its dominion over property; but it can not exceed its limits, when it acts upon property. On the other hand, to whatever laudable purpose the *spiritual* power should attempt to direct,

The application changes not the nature of property.

\* Pey. de la Competence de Deux Puissances, vol. ii. p. 135.



BOOK III.

CHAP. II.

Property no  
object of the  
apostolical  
mission.

apply or appropriate property, it would essentially exceed its limits, and the act would *ex vi sua* be null and void against all mankind; for the spiritual power holds its rights *jure divino*: what God never gave to his apostles, his successors can never have since acquired: for the rights accruing through such succession are those only, which the apostles possessed by the special gift of their divine master, amongst which there must have been a right to take, hold, enjoy and transmit property independently of the *civil* magistrate to justify my Theological Correspondent in pronouncing so dogmatically, that it is “inconsistent with the character of a Catholic to assert, that the rulers of the realm have powers over church property.” I on the contrary, think myself called upon to declare, which I do with full deference and submission to my own spiritual superiors, and to the divines of all societies of Christians unexceptionably, that every Catholic Christian ought to believe, that the dominion of temporal property was no part of the charter, commission, rights or powers given by Christ to his apostles, and transmitted by the spiritual generation of pastors to the present existing governors of his church: on the contrary, that the very essence of temporal property consists in its being subject and liable to the control or supreme dominion of the *civil* magistrate, as it essentially is the creature of society, qualified and modelled by the *civil* power of each particular State: the supposition therefore of my Correspondent is to be absolutely denied, *viz.* that the church

(in



(in the true spiritual sense of its actual existence) is capable of possessing property, and that any property can exist, which is not subject to the rulers of the realm, or the *civil* power of the State, where it is situated.

BOOK III.  
CHAP. II.

I am aware of the accumulative mass of prejudice, that presses upon every individual, who attempts to call in question, or doubt the rights of the church, to what is called *church* or *ecclesiastical* property. From my having expressed my opinion in the *Jura Anglorum*, that the supreme and paramount dominion of all church lands and other property is in the State, I have been charged with approving of the late sacrilegious disappropriations, as they are called, of church property in France, and with supporting a principle subversive of all religious establishments, and consequently ruinous to religion itself. The obvious reply to such charge is, Religion and justice can never stand upon a ground of falsehood: therefore the truth ought to be investigated; and when discovered, should be exposed as clearly, and published as widely as possible. It is my task to attempt it. *Suppressio veri* in every discussion of moral duty and practice becomes *suggestio falsi*. Thus, when my Correspondent charges me with *inconsistency* with the character of a Catholic, "for making the Catholic canon law dependant on the "authority and will of the temporal legislature," he suppresses the truth of this fact, that the Catholic canon law embraces many objects, that are avowedly within the competency of the *civil*

Right of the church to ecclesiastical property.

Canon law embraces temporal objects.



BOOK III. power, and therefore *he suggests the falsity* of the authority  
 CHAP. II. of the canon law in these particulars being independent of the  
 temporal legislature. He would have spoken truth, had he said  
 that the Catholic canon law in all regulations affecting objects  
 immediately tending to the eternal salvation and the consciences  
 of Christians is independent of the *authority and will of the tem-  
 poral legislature*. In such case there would have been no *suppressio  
 veri*, and therefore no *suggestio falsi*.

Every man, that can and will read the overwhelming mass  
 of canon law, decretals, councils, &c. must have internal evi-  
 dence, that a great part of them is intended to affect objects not  
 of the competency of the *spiritual* power\*: his duty after this  
 evidence is to enquire, what force, efficacy and validity the civil  
 power of his State gives to the canon law or decretal in  
 question; for he can only be obliged to obey it, because the  
*spiritual* or the *civil* power requires his submission; if either of  
 them do require it, God enjoins him to submit, but he ought to  
 know, which power does in fact enjoin the duty; for in one  
 case he may, by quitting the community subject to the civil law,  
 throw off the obligation; in the other, the obligation of the  
 spiritual law will bind him, as it does every other Christian  
 throughout the universe.

\* Gerson says, "Spiritual power is a power instituted by Jesus Christ, which  
 "has for its object only spiritual things, and tends to a supernatural end."



BOOK III.

CHAP. II.

Legitimacy  
of children  
an object of  
the *civil*  
power.

An Englishman reading the canon law, by which it is positively decreed, that children born before marriage become legitimate by the subsequent marriage of their parents, has full evidence, that the legitimacy of children is a pure *civil* quality, and entitling a person to nothing but *civil* rights; that it is consequently of the exclusive competency of the *civil* power. Whatever right therefore the framers\* of this canon law might have had to enjoin a point of *spiritual* discipline, the legitimacy of an Englishman, which gives to him all the *civil* rights, which it refuses to a bastard, is not an object within the competency of the *spiritual* power, and therefore their jurisdiction goes not to it: and as the laws of England reject this canon law, that is, refuse to permit it to take effect within the realm of England, I am to regulate my submission to or rejection of that canon law, purely by the municipal law of my own country. When I said in my *Jura Anglorum*, "that one part of the canon law cannot *proprio vigore* have a more binding quality than another," I was deficient in clearly explaining what I wished and meant to enforce, which would have been better and more fully explained by the difference I now draw between the objects of the competency of the *spiritual* and *temporal* legislative powers: if the proposition, as it fairly ought, be referred only to these respective

Binding qua-  
lity of the  
canon law.

\* I avoid calling them legislators, for I find a great variety of opinions amongst divines upon this question, "*Who are the legislators of the canon law?*" and I wish to steer as clear of theological doubt as the nature of this enquiry will admit.

objects,



BOOK III.  
CHAP. II.

objects, it will be strictly true; for one part of the canon law *affecting temporal matters*, cannot have a more binding quality than another part of it also *affecting temporal matters*: but it never was in my contemplation to say, that one part of the canon law affecting matters of eternal salvation and the consciences of Christians, which are the proper objects of its competency, cannot have a more binding quality, than another part of the canon law affecting temporal matters, over which the jurisdiction of the canonical legislators extends not. \* *Le pasteur destitué de la force extérieure ne peut commander que la conscience.*

Transaction  
about legiti-  
mating chil-  
dren at Mer-  
ton.

I find it unnecessary to add more to what I have said upon the subject of the transaction of the bishops and barons at Merton, in answer to what my Correspondent has animadverted upon my representation of it in the *Jura Anglorum*†. My Reverend Correspondent seems not to be in the habit of analysing powers, or tracing effects to their real causes, and therefore he says, that the whole intent of this canon law took effect notwithstanding the *civil* power would not adopt it as a law of the State; and the ground of this extraordinary assertion is, because a bishop both before and after that time could have promoted a bastard to holy orders, or to an ecclesiastical benefice, as fully as if he had been legitimated by the State. The explanation of this is

\* Pey. vol. iii. 186.

† *Jura Anglorum*, 236, 237.



obvious; the act of ordaining a priest by the imposition of hands, and of conferring spiritual jurisdiction by institution or confirmation are exclusively of the competency or resort of the *spiritual* power, or of the governors of Christ's church: therefore the *civil* power or the State, can neither prevent nor control the exercise of these powers by the persons, who possess them independently of the State. But if our parliament should think proper to declare bastards incapable of holding lands, even in a corporate capacity, as they are incapable of taking by descent, the ordination of this *spiritually* or *canonically legitimated* bastard, and his subsequent institution to the cure of souls within a parish, might be valid to all the intents and purposes, for which they were conferred by the *spiritual* power; but neither ordination nor institution would in such case render him capable of *induction* or give him a right or title to enjoy his tythe, glebe, or other clerical immunities, which can alone be granted by the State.

Having now endeavoured to establish the general grounds and principles for distinguishing the causes, from which the effects really proceed and thereby for determining those particular acts of our submission and obedience, which constitute the separate and distinct duties of the *citizen* and the *christian*; I shall proceed to examine more in detail the whole system of church property in this country, since the Christian religion has received the *civil* sanction of the State. This enquiry I shall preface with the observation of a very orthodox and well-informed Divine, who has digested this subject into more methodical order, than

any

BOOK III.  
CHAP. II.

General system of church property in England.



BOOK III. any modern writer, whom I have met with\*: "Il suit qu'on  
 CHAP. II. "ne doit pas juger des droits des deux puissances par certains actes  
 "particuliers de juridiction, lorsqu'ils passent les bornes de leur  
 "compétence: que ces actes ne deviennent valides, que par le  
 "consentement au moins tacite de la puissance qui a juridic-  
 "tion; & qu'ils ne peuvent jamais établir un droit réel en vertu  
 "de la prescription."

No right  
 accrues to  
 either power  
 by prescrip-  
 tion.

True it is, that the invasion encroachment or usurpation of a right neither justifies the exercise of it, nor renders the act licit or valid: nor can such an encroachment of *civil* rights by the church, or of *spiritual* rights by the State be aided by prescription; for no length of time can alter the nature of things, and upon the essential nature of things rests solely their liability to the control either of the *spiritual* or *temporal* power: the several and respective rights of both powers are inalienable, imprescriptible, and indefeasible.

My Reverend Correspondent's ideas differ so widely from mine upon the nature of ecclesiastical property, that I cannot without injustice withhold the substance of them from my reader. For as he assures me, that my principle upon this subject\* is "more  
 "diverging from Catholic truth, than Wickliffe's proposition con-  
 "demned by the council of Constance," it is to be presumed, that he expects belief and credit from the generality of his own

\* Pey. vol. iii. p. 86.

† Page 225.



body. “\* Whatever alms, donations, oblations, and obven-  
 “ tions are given to the church for the service of God, the assist-  
 “ ance of the poor, and other religious uses, are by divine right  
 “ inalienable from the intended purposes; and therefore in what-  
 “ soever hands they may be lodged, the church, as general spi-  
 “ ritual superintendant of the observance of the law of God, has  
 “ a right to command application of them to the intended ser-  
 “ vice: and that in case of disobedience, she can enforce her  
 “ commands by suspensions, interdictions, excommunications,  
 “ &c. as she thinks proper.” The observance and violation of  
*the law of God* are objects of serious and conscientious atten-  
 tion to every human being. It becomes then a discussion of high  
 importance; for I know of no country, clime, or government,  
 which authorise the breach, or dispense with the injunctions of  
 the *law of God*. Without making any sacrifice to religion  
 or truth, I shall with confidence advance some positions, from  
 which no believing Christian will dissent: viz. that no property  
 has been holden *jure divino* since the cessation of the theocratic  
 settlement and appropriation of the Land of Promise: that no  
 property, in the present system of social nature, can by *divine right*  
 be absolutely inalienable: that the Catholic Church of Christ can-  
 not command the application of property, because Christ gave no

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CHAP. II.

The Roman  
Catholic  
clergyman's  
opinions upon  
ecclesiastical  
property.Every man in-  
terested in the  
*law of God*.

\* P. 223. These dogmatical sentences of condemnation from private un-  
 authorised divines have driven me to the necessity of rejecting the old axiom,  
 “*Per spicua non sunt probanda.*” I crave therefore the indulgence of my reader,  
 if I attempt proofs, which to him may appear frivolous or redundant.



BOOK III. such power to his apostles: that it cannot superintend the ob-  
CHAP. II. servance of the *civil* or *municipal* laws of different states, which regulate property, without interfering with and controlling the *civil* or *temporal* power (although it be allowed on all hands, that the *spiritual* and *civil* powers are each of them supreme and absolutely independent upon each other), and supremacy and independence formally exclude superintendence and control.

General  
 nature of  
 church pro-  
 perty.

My design is not to enter minutely into a detailed discussion of the different sorts of church property, but to establish upon a broad unquestionable principle the general nature of every existing species of it in this country, in order to shew more satisfactorily, that none of it derives its origin from the *spiritual* power; that it is not supported, nor can be affected or controlled by the *spiritual* power. Under the general idea of church property I comprehend every species of property, which ever has been, since the foundation of Christianity in this country, appropriated to clerical or religious persons, and made applicable to their support or maintenance, or to what were formerly called *pious* (though by some later statutes termed *superstitious*) uses; and all payments which may be legally required and forcibly levied upon the individual by or for ecclesiastical persons. Such are oblations, obventions, offerings, prestations, pensions, and all church dues; land, glebe, tythes and other corporeal and incorporeal hereditaments. It is distinguishable from *temporal* or *lay* property, not by any difference in its nature or essence, but by its intended appropriation



tion to spiritual or ecclesiastical persons and purposes, and by its descendible quality to successors in a corporate capacity. When I say, that the *spiritual* power has neither right nor control over it, I am far from wishing to suggest, that the *civil* magistrate is free to disappropriate unjustly or wantonly any church property, and to divert it from a laudable and pious to a pernicious or criminal, or even an indifferent end.

BOOK III.  
CHAP. II.

The *civil* magistrate has his conscientious duties with reference to every part of his delegation or trust, which is generally to preserve and maintain the peace and welfare of his delegators, who are the community subject to his power. The wanton disappropriation and subsequent criminal application of the property of any lay foundation, or even of a simple individual, would be unjust on the part of the *civil* magistrate, and consequently sinful in the sight of God: but the act would bind the community, because all property is essentially subject to the supreme *civil* power, and must vest in the individual, to whom the state annexes it: for after the law of the state has once vested it in an individual (no matter for what motive or what cause) every act to disappropriate it from that individual by any private person whomsoever, becomes an infringement of the commandment, *Thou shalt not steal*. This commandment can only operate with reference to such things, as the state gives the exclusive use and possession of to certain individuals, as if it had been said, *Thou shalt not take unto thyself that, which the state has given*

Duty of the  
*civil* magi-  
strate.

The com-  
mandment  
"Thou shalt  
not steal."



BOOK III. to another, or forbidden thee to possess. But no act of the  
 CHAP. II. *spiritual power* can so divest and vest property, as to affect the  
 operation of this commandment of God upon it. Thus for  
 elucidation's sake, I will suppose an unanimous decree of a general  
 and œcumenical council of the Catholic Church, by which an opu-  
 lent individual for the most horrid public crimes is excommuni-  
 cated, his lands and goods declared to be forfeited and appropriated  
 to the bishop and clergy of the diocese, in which they are situ-  
 ated. I say in such case, if the sovereign *civil* magistrate did no-  
 thing either to confirm ratify or enforce the decree of the council,  
 every clergyman would sin against the commandment of God, who  
 should take and appropriate to himself any particle of the property  
 of such excommunicated sinner, notwithstanding the *spiritual* de-  
 cree of forfeiture and appropriation of his lands and goods.

The author's  
 intention of  
 supporting,  
 not opposing  
 tythes, &c.

The particular objects of my attention will be tythes, ecclesi-  
 astical immunities and church lands in England. Far be from  
 me a wish or design to discredit discountenance or oppose these  
 institutions. I have no other view, than that of enforcing reve-  
 rence and respect for them, in order to preserve and strengthen  
 them by shewing the real grounds of security, upon which they  
 stand. Trifling dislikes, but little disregard, perhaps no irreverence  
 would have ever existed in the minds of the laity towards the  
 clergy, had the latter never assumed any claim power or autho-  
 rity independently of the community, but such as they really  
 derived from the *spiritual* source of apostolical succession. I wish  
 therefore



therefore and mean by what I say to promote, not to check the respect, which is due to church governors and ecclesiastical ministers. In deference however to truth, and in consideration of such of my readers, as may be disposed to give implicit credit to my Correspondent's assertions arguments and deductions upon this subject, I beg leave to remind them, that although he have so peremptorily condemned me as heterodox for "attributing powers to the rulers of the realm over church property" (p. 111), yet he quotes Cornelius a Lapide and Lessius\* to prove, "that the immunity of the clergy is an human, not a divine command." (p. 205). Now that, which is not of *divine right* must be of *human right*, if it be of any right at all. And it is necessary to attribute powers to the rulers of the realm over that, which can only be enforced by *human command*.

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CHAP. II.

Clerical immunities of human right.

Let us consider by what right tythes either now are, or at any time were paid in England. I presume it to be the general belief of my readers upon the subject of tythes, that besides the general reason policy and exigency of the thing itself, our blessed Lord has especially ordained, that the ministers of his gospel shall be maintained by those, to whom they administer the word of God. "† Know ye not, that they, who are employed in sacred functions are fed from the temple, and they, that serve the altar partake with the altar? So also hath the Lord ordained,

Real ground of tythes.

\* Two Jesuits of his own order.

† 1 Cor. c. ix. 13, 14.

" that



BOOK III. "that they, who preach the gospel should live of the gospel."

CHAP. II. 'Οὕτω καὶ ὁ Κύριος διέταξε: it was a positive ordinance; and of course binds the conscience, and obliges every Christian to compliance and submission. There is therefore an universal and indispensable duty and obligation upon every Christian to contribute out of the property, which he has at his disposal, so much, as will be his proportionate share, towards maintaining and supporting the church governor and his ministers, to whom the individual owes spiritual submission, in respectable ease, above want, and out of the necessity of diverting their minds from the objects of their *spiritual* functions to the cares and anxiety of temporal concerns.

Maintenance  
due wherever  
the minister  
is in want.

This obligation attaches upon every Christian equally throughout the universe, wherever the necessity or occasion of it arises. This necessity or occasion is the poverty and distress or want of the particular *spiritual* ministers and superiors, to whom spiritual obedience is due: but this obedience is not unlimited: it extends not to every minister of the gospel, who is in holy orders, and has the general capacity of exercising the sacred functions when called upon: but it is commensurate with the jurisdiction of the person, to whom obedience is due, which is necessarily bounded and confined to certain limits of a diocese parish &c. The duty lies indiscriminately and unexceptionably upon all Christians; the performance of it arises with the occasions of the want and poverty of the individual minister, who has received and

exercises



exercises *spiritual* jurisdiction over them. Man may be humane  
 beneficent and charitable to many, but he can only comply with  
 this Christian precept by contributing to the maintenance of  
 that particular minister, to whom he owes submission and obedi-  
 ence: St. Paul spoke of such voluntary and charitable contribu-  
 tions, Rom. xv. 26, "For it hath pleased them of Macedonia  
 "and Achaia to make some contribution for the poor saints  
 "that are in Jerusalem, for it hath pleased them and they are  
 "thus debtors." The difference is striking between *ὁ Κυριος*  
*διεταξε* and *ευδοκηται γαρ*. The Macedonians and Achaians were  
 not bounden by the ordinance of Christ to contribute to the  
 ministers or others at Jerusalem: therefore he says, *It pleased*  
*them*. The catholicity or universal aptitude of the Christian  
 religion to all forms of *civil* government would render a general  
 deposit of *ecclesiastical* property, or fund for the universal church,  
 impracticable in the new law, though such were made at Jerusa-  
 lem in the old. To this we must add the impossibility of any  
*spiritual* corporation or representation of the church of Christ  
 acquiring in that character the dominion of any specific pro-  
 perty in lands goods or money, or of transmitting them by  
 means of spiritual generation to their successors.

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 CHAP. II.

Difference  
 between cha-  
 ritable con-  
 tributions and  
 payment of  
 the gospel  
 maintenance.

This like every other evangelical precept, must from Christ's  
 promise of indefectibility to his church continue to operate upon  
 and

Obligation  
 of Christ's  
 ordinance al-  
 ways the  
 same.



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CHAP. II.

and bind every Christian, that now does and that ever will exist to the end of time. Our ancestors therefore could do nothing either to enforce or weaken the obligation; it is at this moment equally binding upon the existing generation of Christians as it was upon those of the first century. But the actual and immediate obligation of observing the precept or ordinance arises out of the particular occasion of the neediness of our lawful pastor or minister. This may change alter or vary indefinitely as to persons times and circumstances.

How and  
when the ob-  
ligation is re-  
moved.

A patron of a parish possessing an ample fortune may by applying a part of it to the maintenance of the minister remove that occasion of neediness and want, which would have obliged the parishioners to contribute towards the maintenance of such needy minister in obedience to the precept. Upon this principle most Christian states have in process of time applied or permitted to be applied certain funds and lands to the maintenance of the ministers of the gospel, in order to remove the occasion, and consequently the obligation of these contributions, which might, particularly in numerous congregations, be attended with hardship difficulty litigation differences and sometimes with dislike and disrespect for the minister himself. But this removal of the occasion affects not the nature of the ordinance, which operates upon every Christian, in every situation and in every occasion, in which his *spiritual* superior, or the person,

to



to whom he owes his *spiritual* obedience happens to be in want.

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CHAP. II.

The precept falls not absolutely upon the property neither definitely as to the quantum, nor as to the nature of it. It would be frivolous to suppose, that a Christian possessed of 10l. per annum in landed property, was obliged by this precept to contribute or pay twenty shillings per annum to the support of his spiritual minister of the gospel; and that another Christian subject to the same minister receiving out of the funds twenty thousand pounds per annum, should not be bounden by this precept to contribute or pay one shilling towards his maintenance. Neither does the precept absolutely or unconditionally attach upon the individual: otherwise the condition or situation of the minister could not alter the obligation. If the obligation were absolute and unconditional, no property or provision secured to the individual minister could exempt the parishioner from the obligation of the precept; it would in such case be positive, either to pay something annually, or a given portion of his general property, or of some sort of property to or for the use of his spiritual superior. It does not follow, because the divine ordinance binds every Christian to contribute to the support and maintenance of the minister, who has jurisdiction to administer the gospel to him whenever he is in want, that such minister therefore has a *divine right* to that particular property, by the possession of which he is kept from want, and which prevents the

The precept indefinite as to the quantum and nature of the property.



## BOOK III.

## CHAP. II.

In what the  
obligation of  
the ordinance  
consists.

obligatory operation of the ordinance from falling upon his parishioners. The specific possessions of the ministers of the gospel must essentially be holden by *human* right. Thus for example, if a bishop and parish priest be supplied with an honourable and easy maintenance by some opulent individual, or if they be entitled by the state to a portion of land or money, in either of these cases the evangelical precept binds not the Christian residents within that diocese and parish, because the occasion for its observance arises not. The obligation of the precept is not to deprive oneself of a fifth or a tenth of one's property, nor to give any specific part of it to our *spiritual* superior; but to contribute proportionably with the rest of the congregation or parish, towards keeping the minister in honourable decency and comfort, out of want distress or the necessity of diverting his attention from the duties of his ministry to the calls of temporal or worldly matters. But no man will pretend, because a person has spiritual jurisdiction over a part of the church of Christ, that he therefore has a divine right or title to such specific donations of a founder, or the particular provision settled upon him by the state. Yet the subtraction or want of any such settled maintenance, would give him immediately a *divine* right or title to the general gospel maintenance by contribution amongst those, over whom he possesses *spiritual* jurisdiction.

Example of  
St. Paul.

When St. Paul had expressed the positive obligation of Christians maintaining their ministers ("So also the Lord ordained, "that



“that they, who preach the gospel shall live by the gospel”), he reminds the Corinthians of the *divine* right and claim, which they have to a maintenance, who administer the gospel unto them: yet he immediately adds, that he had not personally stood in need of any such contributions from them. “But I have used none of these things.” (15.) He is as explicit as he can be in mentioning the cause or consideration, for which the spiritual minister of the gospel is entitled to his temporal maintenance or support. “If we have sown unto you spiritual things, is it a great matter if we reap your carnal things?” (1 Cor. xi.) And although on all occasions he remind the faithful, and strongly inculcate the ordinance of Christ to them to provide for their ministers of the gospel, and the right of the ministers to demand and call for such maintenance; yet he himself, where the occasion would allow him, prevented the obligation, which the faithful were under of supplying his and the wants of those labourers in the gospel under him, whom he found requisite for the work of the Lord: not that he was under the obligation of so doing; for if *he* had been so obliged, his successors would still be so at this day. “Neither did we eat any man’s bread for nothing, but in labour and in toil working night and day; lest we should be burthen-some to any of you. *Not as if we had not authority:* but that we might give ourselves a pattern to you to imitate us.” (2 Thess. iii. 8, 9.) Thus did this great apostle give the brightest pattern of evangelical perfection in loving his flock, by easing them of a



BOOK III.  
CHAP. II.

burthen, which had he not prevented his own wants by his manual labour, would have fallen upon them to supply; and in encouraging them to honest industry by his own example, to which the remainder of that epistle strongly applies. This same tenderness for his flock, which he expresses to the Thessalonians in this epistle, he also enlarges upon in his discourse to the ancients of the church, whom he sent for from Miletus to Ephesus. (Acts xx.) “I have not coveted any man’s silver gold or apparel, as  
“you yourselves know: that as for such things as were needful  
“for me and them, that are with me, these hands have furnished.” Here the apostle foreseeing in the frailty of human nature, that since by God’s ordinance the administration of the gospel entitled the minister to a *temporal* support or maintenance (which he elsewhere spoke of as *burthensome*), the person entitled as well as he, that should be obliged to contribute might be actuated by covetousness, which on either side must be productive of great mischief, he manifested by his own example how desirable a thing it ever would be to prevent by proper means the necessity of the minister’s calling upon the faithful individually for their support and maintenance; for under the actual want alone of the minister could the faithful be compelled to contribute their quotas in obedience to the divine ordinance.

Grounds of  
spiritual do-  
nations, &c.

Upon these reasons and the example of this great apostle stand the commendable and proper grounds, upon which Christian states and opulent individuals have contributed and established independent



independent maintenances for the ministers of the gospel: but the property so appropriated alters not its nature; it remains, as it always was, subject to the supreme control of the state; and is no more holden by the clergy *jure divino*, than the lay patron holds his right of presenting a clerk to the *bishop*, or the manor or land, to which such right may be annexed.

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The divine command to all Christians of supporting their respective ministers when in want must oblige and bind them unexceptionably to the end of time, and give the ministers a *divine right* to be properly supported: but the different circumstances, which prevent the occasion of complying with this ordinance of God are in their nature various accidental temporary partial and always extrinsic to the ordinance itself. They rest upon the *civil* power of the state, which gives a permanent and a successive quality to property thus appropriated, upon the disposition of founders or voluntary contributors towards the maintenance of the gospel ministers, or upon the exemplary act of supererogation of the pastor, who may if he please, like St. Paul prevent the compliance with the ordinance from becoming burthensome to his flock by the labour of his own hands, or the appropriation of his private patrimony.

Circumstances which prevent the obligation of the ordinance.

In order to determine justly the right, which one person has to receive and another the obligation to pay, we must first look into the nature of the claim, which must exist in some one or more

Right of the ministers to the gospel maintenance.



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CHAP. II.

Spiritual jurisdiction gives the right.

more individuals, and then examine the circumstances, which render the claim operative and effectual against other individuals. St. Paul has expressly said, that the "sowing of spiritual things gives the right to reap carnal things," and that those, who "are of the altar are to live by the altar." Now no one can have a right to sow *spiritual* things, and to administer to the faithful at the altar without apostolical mission or true and valid *spiritual* jurisdiction, which I have endeavoured before to shew cannot be conferred by *civil* power, and must be holden *jure divino*: every right and benefit therefore, which depend upon this *spiritual* jurisdiction, must essentially be also holden *jure divino*. The claim then, which by divine right a *governor* of the church of Christ and those, whom he employs under him in the ministry have, operates only upon those, who are to be governed by them, or in other words, who are subject to their *spiritual* jurisdiction. The claim therefore of *divine right*, which the minister of the gospel has to a maintenance affects only those, over whom he has a mission, "to whom he sows the spiritual things:" and this attaches upon his whole flock equally proportionably and unexceptionably, wherever the necessity of the contribution arises. But the divine right to this contribution of a minister's own flock under the actual necessity of the case obliges neither legislators nor individuals to supply the means of preventing that necessity from falling upon any particular flock. Christ's ordinance was to the faithful to provide in case of need for their own *spiritual governor* or *minister*, not to states or individuals to



prevent that ordinance from becoming, as St. Paul says, "bur-  
 "then some to others." Nothing certainly can be more laudable  
 and desirable, than a regular fund appropriated to the support of  
 the ministers of the gospel, in order to prevent the necessity  
 of individuals contributing towards it *pro rata*, in compliance  
 with the injunctions of the ordinance: but every fund so ap-  
 propriated still retains the nature of the property, of which it  
 consists: and this essentially is to be a creature of the *civil* power,  
 and consequently to be under its control; it cannot then be in-  
 alienable by the *civil* power, as my Correspondent asserts. The  
 absolute inalienability of property would take it out of the con-  
 trol or power of the civil magistrate: and yet there can be no  
 other disposition of property but mediately or immediately by  
 the supreme power of the state, which is that of the *civil ma-  
 gistrate*.

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 CHAP. II.

Spiritual ap-  
 propriations  
 beneficial.

From what has been already said it will follow, that the divine  
 ordinance for maintaining the ministers of the gospel extends only  
 to those particular church governors and ecclesiastical ministers, to  
 whom the duty of *spiritual* submission and obedience is due; that  
 the temporalities of bishops, and tythes and other maintenances  
 and stipends of their inferior clergy, whom they institute or ap-  
 point to work in the vineyard under them are established by  
 the State, in order to prevent the operation of the precept  
 upon individuals. But this idea or substitution of preven-  
 tion



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tion\* is only applicable to such church lands, revenues, or immunities, as are possessed by those, who might without them have claimed

\* In my *Jura Anglorum* (chap. 4. sub fin.) I endeavoured to prove that, if this sort of property could be given to and be enjoyed by incorporated clergymen and their successors independently of the State, then could not the State any more prevent the donation or investiture of the property, than new-model alter or alienate it when once made; but we have repeated instances of both in this country: therefore it will be generally admitted, that all church livings, benefices, possessions, or temporalities, are but appendages of the *civil* establishment of religion, and consequently subject to the control of that power of the State, which could alone institute such an establishment. Now every act of ownership formally proves the dominion of the property, over which it is exercised: for an act of ownership is the direct contrary act to that of rapine, stealth or usurpation. So we see in this country, that an act of the *civil* magistrate, viz. of the British Parliament, can produce such an alteration or change in property, as immediately induces fresh and new moral obligations upon all mankind respecting it: an effect which cannot be produced by any other power upon earth, against the will and consent of our Legislature. The most solemn act or decree of all the other Sovereign Powers of Europe combined, or of all the bishops of Christ's church convened in council, cannot shift alter transfer or in any manner affect the smallest particle of land, or the value of one shilling in goods or money within the realm of Great Britain; which clearly demonstrates where the *altum dominium*, or paramount and transcendent property exclusively and unalienably resides. But as the *civil* magistrate of this realm has received no divine command to appropriate any part of the land or goods of this community to a substitution fund, in order to prevent the possible inconveniencies of enforcing the divine ordinance of raising the stipends of church



claimed the benefit of the precept; and nothing but real *spiritual jurisdiction*, as we have seen, can support this claim. A great part of church lands in this nation formerly belonged to abbeys monasteries and convents of religious men and women, who having

BOOK III.  
CHAP. II.

Spiritual jurisdiction the only claim to the gospel maintenance.

church governors and gospel ministers by contributions among the faithful; so must the discretion and prudence of the *civil* magistrate direct and guide him as well in continuing, as in first establishing these fixed and permanent maintenances provisions and stipends for the ministers of the word of God. I will therefore put an hypothetical case, which will prove, I trust, beyond question, that tythes and all other ecclesiastical provisions in this country were originally grounded, and must perpetually continue to be holden, upon the discretionary will of the *civil* magistrate. Suppose then, that in some particular parts of this kingdom the pious liberality of founders had encreased the revenues of some particular churches to such an extent, that ambition corruption avarice and intrigue generally, perhaps always, supplied these richly-endowed churches with improper governors and ministers; and that the consequence of such a corrupt ministry was the scandal disturbance and immorality of their flocks. I should in such case presume it to be the conscientious duty of the *civil* magistrate to disannex and disappropriate such large possessions, as the sure incentives to moral depravity, and either to leave the faithful to the christian obligation of a gospel contribution, or to dole out such portion of wealth or substance to each minister, as should keep him in decent independence, and secure him from being necessarily withdrawn from the work of his ministry to temporal concerns. The moral obligations of the *civil* magistrate to dispose of this disannexed church property would be no other than that, under which he is bounden in justice to apply every shilling, over which he has the control according to the nature and tenor of his trust; that is, to such purposes, as in his discretion shall appear most conducive to the good of the community, who delegated to him his power and his trust.



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no mission to administer the gospel to any particular set of Christians, had no *spiritual* jurisdiction over any part of the flock of Christ; consequently no divine right or claim to a maintenance under the Christian ordinance. The lands therefore, which they possessed exempted no individuals from the necessity of contributing to their minister in case of distress and poverty: for the appropriation of ecclesiastical property can only operate as an exemption from the precept, when the provision is immediately applicable to the person to whom the divine right or claim would otherwise have arisen.

French Revolution productive of misconceptions and misrepresentations.

I am not insensible of the delicacy of discussing and questioning at this day the nature of any claim set up by Church or State to the possession of any property or exercise of any power. The stupendous event of the French Revolution has not only driven many of its warmest advocates and abettors beyond the line of prudence truth and justice in their means and efforts to establish it, but it has produced a still more pernicious extensive and lasting effect upon many of its neighbouring nations. It has caused them to depart from the venerable maxims and rules of policy, which antiquity and reason had consecrated as fundamental. It has driven the generality of them from the secure holds of sound constitutional doctrines to the delusive and dangerous opinions of despotism and arbitrary power\*.

operated.

\* To such effects alone can I attribute the alterations in some new editions of



operated in most of them an absolute incapacity of forming a true judgment of the rising events, by fairly analysing and impartially distinguishing their ideas upon them. In the present ebullition of zeal for *Church and State*, it suffices that a Burke should have fulminated his anathema against the sacrilegious harpies of the church property of France, for millions to engraft upon this sentence the *jure divino* tenure of church property in general, and consequently the necessary and perpetual unalienability of it, when once supposed to have been appropriated to and made the portion of God, or by donation to have been transferred from the *temporal* to the *spiritual*, from the *human* to the *divine* control. As little am I disposed as any man living to commend or justify the sweeping disappropriation of all revenue from the clergy of France with that indiscriminate cruelty with which the Convention re-assumed the whole fund, which the nation had devoted to their support for many centuries; by which they seduced the less steady for temporal lucre to renounce the fundamental principles of their order and ministry; by which they drove the firm and conscientious into poverty distress and exile; by which they forced unmissioned pastors upon the sheep of Christ to keep up the mock appearance of a fold, till the

of Moral Philosophy and Dialogues. They acquired and deserved fame from being founded and worked upon the true and broad basis of political truth and justice. But revolutionary principles are become unfashionable; and the long exploded doctrines of Toryism are now deemed necessary to support, and even to approach a Prince of the House of Brunswick.



## BOOK III.

## CHAP. II.

Duty of the  
French *civil*  
magistrate  
with respect  
to church  
property.

want of lawful pastors should have totally dispersed infected or destroyed the flock.

Whoever were at any time the delegates of the community of that distracted empire, King, Notables, Constitutionalists, or Conventionists, the civil magistrate could have but one line of duty to follow, which was to manage and apply this part of the national fund as the decided majority of the nation should choose. Whilst their Monarch enjoyed his ancient power, the majority expressed their will through that of their Sovereign. But this deputation of the whole *civil* authority of the kingdom to one individual exclusively, as in the ancient monarchy of France, could not in its nature be perpetual. This, like every other delegation of power, must essentially have been *durante bene placito* of the delegating community, whose will is at all times equally efficient. The existing generation is not bounden by the act of their predecessors, because they passed it, but because the present legislator gives validity to it by his acquiescence. This acquiescence of the existing legislator or representative of the community is a successively and perpetually renovating confirmation and *quasi* re-enactment of the law, until he shall choose to repeal or alter it. I undertake not to examine, whether the delegates of the French community were lawfully constituted, or whether they conscientiously complied with the spirit and duty of their delegation in this act of disappropriation of the



the church revenues ; but I say, that the church revenue was a part of the *national* fund ; that the *supremum et altum dominium* of it was in the supreme *civil* magistrate of that nation, whether a sole monarch or many deputies as trustees for the nation ; and that such *civil* magistrate was obliged to apply that fund in such manner, as the nation should wish and direct, so as thereby to promote and preserve their happiness and welfare, which was the sole possible object of his delegation or trust.

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In order to enable us to form a just judgment upon this subject, let us endeavour to conceive true and precise ideas of *sacrilege*, *church property* in general, and its supposed or pretended quality of *unalienability*. Without entering into the etymological disquisition of the word, I apprehend that *sacrilege* in its most large and common acceptation is a complex idea, involving the existence of a God, the consequent duty of man to pay him some external cult, and therefore the propriety of consecrating altars temples vessels ornaments and other material substances immediately and exclusively to his service, and engrafting thereupon either an unjust disappropriation, or a wilful and irreverend profanation and abuse of any of the things so consecrated to him. I mean not to enter into all possible cases, that moral divines may bring under the crime of sacrilege, but merely to express fully and fairly that sense of the word *sacrilege*, in which it can alone be applied to a State for disannexing church revenues. The theft or robbery out of a consecrated

Sacrilege.



BOOK III.

CHAP. II.

secrated church of the sacred vessel, baptismal font, communion plate cup &c. would, I presume, be a greater sin before God (as it is an aggravation of the civil offence) than the robbery of that value in money from a private individual; but every disappropriation of such consecrated things is not in itself sacrilegious; otherwise the necessary or expedient demolition of a church, pulling down of an altar, &c. would be so. The abuse and profanation of these consecrated things must be wilful and irreverend. Thus I presume, that any sort of application of the bread consecrated or blessed for the sacrament, in derision or contempt of the sacred ordinance, would emphatically constitute a sacrilegious act and a very heinous offence against God. But this sort of sacrilege is not in its nature applicable to the disappropriation or profanation of the property of churchmen, or what is commonly called ecclesiastical property, either by individuals or the State. I apprehend, that the robbing a bishop or a military officer on the highway would be one and the same offence to God and to the State: the burning of a standing field of corn would not be a multiplied offence in its nature, or become sacrilegious because a tythe of it was due to the parson. I speak generally upon the obvious nature of these offences; for there is no crime that will not vary in its immorality, by a variation of the motives views and intentions of the offender. Our laws make no difference of offence between burning a barn containing the corn of the lord of the manor, that of a bishop, or the tythe corn of the rector of the parish. I can readily conceive that a person,  
by



by turning his horses into a church, and contemptuously converting it into a stable, may act sacrilegiously; but I do not conceive, that he would act sacrilegiously (though he would unjustly) by turning them into a pasture belonging to an abbey or a bishoprick. In a word, I presume there would be no specific difference in the nature of the crime or sin, if a man were to steal from a clergyman a purse containing twenty guineas, knowing one half of it to be his own private patrimony, the other his church revenue.

BOOK III.  
CHAP. II.

The moral and civil criminality of the act of theft consists in a person's taking from his neighbour what he has no right to himself. The possibility therefore of theft formally excludes all right or dominion in the thief over the thing stolen. The State therefore cannot steal, because they have the supreme right and dominion over all property: for no man can possibly hold his property, but by the consent of the State, and therefore under the necessary and perpetual control of the state. The *civil* magistrate by wantonly disannexing or misapplying the property of an individual, may sin by abusing his trust: but it will not be an infringement of the commandment *Non furtum facies*; it will be an act of injustice to his delegators, whose commission he will have thus exceeded. If the known will of the majority of a community be decidedly against any property whatsoever being possessed by a corporate body, whether sole or aggregate, from that instant arises the conscientious duty

The State  
cannot be  
guilty of  
theft.

of



BOOK III. of the *civil* magistrate to disannex and disappropriate the lands  
 CHAP. II. and revenues of all such corporations, and if he can decidedly learn the wishes and intentions of his delegators, he is conscientiously obliged to apply the property so disappropriated to such purposes, as they may lawfully wish: if he cannot learn to what specific purposes they would have it applied, his duty is to exercise his own judgment to the best of his ability, and apply it in the manner, which to him shall appear most conducive to the good peace and welfare of the community, who constituted him their trustee for this purpose.

Ecclesiastical  
 immunities.

Taxation a  
 diminution  
 of property.

These principles so far from frightening us by novelty, ought to be very familiar to us by constant experience. My Reverend Correspondent, with almost all other theological writers holds, that ecclesiastical immunities are not holden *jure divino*; but *jure humano*: that is, were granted to the clergy by the State; without which grant therefore they would not have been entitled to them. But what mean these immunities? That the clergymen enjoying them shall be exempted from contributing out of their livings to the exigencies of the state, by paying taxes and other impositions. Now the power or right of levying taxes, is that of diminishing the property, out of which they are levied: but no one can diminish my property, but he who has the supreme dominion over it: therefore, if the civil magistrate can diminish when and how much he thinks proper out of the revenues of the church, it is a demonstration that



he enjoys the supreme dominion over that as well as over all other taxable property in the nation.

BOOK. III.  
CHAP. II.

Upon a subject so fertile in law suits, so perplexed in difficulties, so enveloped in darkness, as is the subject of tythes at this day, I feel it incumbent upon me to add some further remarks upon the nature and obligation of paying them, which I hope will prove a preliminary step towards effectuating a more equitable and satisfactory establishment of them throughout the kingdom. If tythes be claimable by divine right, *jure divino*, the obligation of paying them must be uniformly universally and indispensably binding upon all Christians: for the divine institution of the Christian religion is not only universal, or Catholic in extending its effects to all individuals, but in its aptitude to all possible forms of civil government and policy; in so much, that it would be a species of blasphemy to assert, that state reason and policy could in any instance whatsoever lawfully and validly supersede the obligations of divine institution. It behoves us then to enquire not only, in what this divine institution consists, but in what manner its observance has been enjoined and practised by the church of Christ from the foundation of Christianity to the present day: for the office of the church governors, who are the lawful successors of the Apostles, is not merely to teach and explain the Christian doctrine, as Christ revealed it, but to inspect and enforce by spiritual means the practice of those divine institutions, which he established

Obligation of  
tything.



BOOK III.  
CHAP. II.

Practical du-  
ties must be  
known.

when upon earth. Now these church governors, or as they are more generally called overseers (ἐπισκοποι) cannot see to their flock's performance of their Christian duties, unless those duties be defined and ascertained: nor can the flocks conscientiously perform their duties, unless they be clearly and specifically known to be enjoined. In order therefore to fulfil this duty assumed to be enjoined by divine institution, a man must know what portion of his property he must annually or otherwise deprive himself of; whether he should give more of one sort of property than another: to whom he ought to pay or apply it: whether the divine obligation operate upon him differently in different dioceses or countries, and whether he can be validly exempted from it by the *civil* power, either wholly or in part: in a word, whether any act of the civil magistrate can subject particular individuals to an obligation of divine institution, which Christ never imposed upon all mankind.

Right of  
tythes in the  
old law.

It is allowed by every believing Christian, that tythes were due by *divine right* to the priests of the old law: they were defined and ascertained: the times of payment were regulated, and the persons known, to whom they were due. Nor is it to be denied, that many holy fathers doctors and divines of prime respectability have holden, that tythes were enjoined as forcibly (even more so) under the new, than they had been under the old law. Yet it must be allowed, that their opinion is sup-  
ported



ported only by argument of analogy and expediency: for there occurs not in the New Testament one single instance of any mention being made of the payment of tythes to the priests of the new law. The authorities however for the *divine right* of tythes are such, as ought not certainly to be passed over slightly, much less contemptuously.

BOOK III.  
CHAP. II.

Opinions  
upon the  
tythes of the  
new law.

St. Jerome says\*, "That which we have said of tythes and first fruits given by the people of old to the Priests and Levites, do you understand also of Christian people, to whom it is commanded not only to give tythes and first fruits, but to sell all and give to the poor, and follow their Lord and Saviour. Which if we will not do, at least let us imitate the beginnings of the Jews, giving to the poor a part out of the whole, and paying due honour to the priests and Levites; and he that doth not this, manifestly cheats and deceives God."—St. Augustine says†, "Tythes are required as a debt, and he that will not give them invades another's right. Though you be not husbandmen, and have no fruits of the earth, whatever trade you live by, it is of God, who requires tythe of whatever is your livelihood, whether war merchandise or some handicraft trade," &c.—It was holden by the Council of Hispalis, "That rich and poor do rightly offer all the first fruits and tythes as well of cattle as of first fruits unto their

St. Jerome.

St. Augustine

Council of  
Hispalis.

\* In Mal. iii. tom. 5. p. 641.

† Aug. de Temp. Serm. cecxix. tom. 10. p. 235.



BOOK III. "churches; for the Lord saith by the Prophet, 'Bring ye all  
 CHAP. II. "the tythes unto the storehouse,' &c. (Mal. iii.) Let every  
 "husbandman and artificer justly tythe the profit of his labour:  
 "for as God gave all, so he requires tythe of all: of the fruits  
 "of the field, of all food, of bees honey, lambs fleeces, cheeses,  
 "swines, goats, cows, and horses both great and small cattle;  
 "and if any tythe not these, he robs God and is a thief; yea  
 "the curses of Cain are laid up for him, that doth not rightly  
 "divide." Mr. Selden\* denies the authenticity of this canon  
 of the Council of Hispalis; but, be it genuine or spurious,  
 the old collectors and compilers of these ancient canons, Garfias,  
 Birminus, Ivo, Burchard, &c. prove the belief of the substance  
 of it to have been very early in the Christian church.

A very staunch advocate for the divine right of tythes, says †,  
 "Selden wishes not to suppress the fact of the prevalence of  
 "the early conviction of the divine right of paying or apply-  
 "ing some portion of one's property to the maintenance of  
 "the ministers of the Gospel; though he hold no specific  
 "portion was fixed or determined by the law of Christ ‡."  
 'But among the known and certain monuments of truth, till  
 'about the end of this four hundred years, no law pontifical  
 Council of 'or synodal (saying that of Mascon) determines or commands  
 Mascon.

\* Selden's History of Tythes, p. 61.

† Comber on Tythes, p. 94, 95.

‡ Hist. Lyt. p. 62.



‘ any thing concerning tenths: although very many are, which BOOK III.  
 ‘ speaking purposely and largely of church revenues oblations CHAP. II.  
 ‘ and such like could not have been silent of them, if that quan-  
 ‘ tity had then been established for a certain duty.’ This coun-  
 cil of Mafcon, which was holden about the year 586 (Conc. 2.  
 Mafcon. can. 5.) says, “ The divine laws taking care of the  
 “ priests and ministers of the church for their hereditary por-  
 “ tion, have commanded (*præceperunt*) all the people to pay  
 “ the tythes (tenths decimas) of their fruits to holy places, that  
 “ being hindered by no labour through illegitimate things, they  
 “ may duly attend to their spiritual ministry; which laws the  
 “ whole society of Christians have for a long time kept invio-  
 “ lable; wherefore we decree, that the whole people bring in  
 “ their ecclesiastical tythes, which the priests applying for the  
 “ use of the poor or redemption of captives, may by their  
 “ prayers obtain peace and safety for the people:” and as it is  
*apud Binnium*, tom. ii. par. 2. p. 269) “ If any be contumacious  
 “ to this our wholesome order, he shall be for ever excommu-  
 “ nicated.”

St. Ambrose speaks, if possible, still more explicitly and em- St. Ambrose.  
 phatically: \* “ What is it to pay tythes faithfully, but that you  
 ‘ never offer the worst nor the least to God, either of your  
 “ corn, wine, fruit trees, cattle, or your garden, your merchan-

\* Amb. Serm. xxxiii. ser. 11. post Dom. 1 quad.



BOOK III. "dise and your hunting. Of all the substance, which God hath  
 CHAP. II. "given a man he hath reserved a tenth part to himself, there-

"fore it is not lawful to retain that, which God hath reserved

St. Chrysof- "for himself." St. Chrysofom's words shall close my quota-  
 tome.

tions of the Fathers' opinions upon the *divine right* of tythes :

" \* When the artificer sells any thing of his art, let him pay a

"first fruit of honorary acknowledgment out of it unto God ;

"let him cast a small part to him, for I require no great matter,

"but so much as the Jews (who were infants in religion, and

"loaden with many sins) paid ; let us that expect heaven do

"as much. I speak not this as making a law, or forbidding to

"give more ; but requiring that less than a tenth be not conse-

"crated ; and not the seller only, but the buyer must do this.

"This rule they also must observe in their profits, who are

"possessors of fields ; this must be observed by all, that gather

"any just increase."

Lateran  
council.

These authorities of the Fathers for the divine institution and  
 right of tythes are more pointedly confirmed by councils de-  
 cretals and canons : "*Illæ quippe decimæ solvendæ sunt, quæ de-*  
*bentur ex lege divina, vel loci consuetudine approbata*† : those  
 "tythes are necessarily to be paid, which are due either by the

\* Chrysoft. tom. v. p. 46. Hom. xliii. in Ep. 1. ad Cor. c. xvi. p. 534.

† Conc. Lat. can. 53. apud Bin. tom. iii. par. 2. p. 692.

"divine



“divine law or approved custom of the place\*. God com-  
 “mands them (tythes) to be paid in token of his universal  
 “dominion †; they are due by divine constitution and ‡  
 “divine command.” I could, by multiplying such quotations,  
 fill a volume: let these suffice to shew the grounds, upon which  
 this opinion of the *divine right* of tythes rests: and truly if we  
 submit our understanding to the mere literal sense and import  
 of the words of those fathers councils and decretals without  
 examining into the force of their authority, the opinions of  
 others, and the actual laws and usages of the church, we shall  
 be scarcely warranted in questioning the divine right and insti-  
 tution of tythes in the new law.

BOOK III.  
 CHAP. II.

I have before fully and explicitly expressed the manner, in  
 which I humbly conceive and submit to the better judgment of  
 others the divine ordinance for maintaining the ministers of the  
 gospel operates upon Christians: but the precept, which cer-  
 tainly is a *divine* institution, must essentially have operated upon  
 all members of the church from the establishment of Christianity,  
 and must continue to operate to the end of time throughout  
 all Christendom, uniformly unexceptionably and indispensably.  
 Far be from me a wish to put a check upon the zeal and de-  
 votion of pious contributors to the revenues of the church; I

Operation of  
 God's ordi-  
 nance.

\* Ind. Decret. l. 3. tit. 30. c. xxvi. p. 1341.

† Ibid. c. xxv. p. 1339.

‡ Ibid. c. xxvi. p. 1342.



BOOK III.

CHAP. II.

am fully confident, that their sacrifices were grateful to God, and upon the whole, the property thus applied became more generally beneficial to the poor and needy, than when retained and managed by private individuals. Without adopting the opinion, that an excessive appointment to any churchman tends to render the possessor more virtuous and exemplary, I agree with Mr. Burke \*, " that we can see a bishop of Durham, or a bishop of Winchester, " in possession of 10,000*l.* *per annum*, and cannot conceive, why " it is in worse hands than estates to the like amount in the " hands of this earl, or that squire; although it may be true, " that so many dogs and horses are not kept by the former, and " fed with the victuals, which ought to nourish the children of " the people."

Every donation to a laudable pious or charitable use will find its reward from a just God, who sees the purity of the donor's heart: but as it is only by the permission of the State, that such appropriations of property can be made, so it is out of the power of the State to divest itself of that supreme or *altum dominium*, by which it permitted the gift, and must continue to superintend and control the property in the same manner it ever did, in whosoever hands it may be vested. I have spoken more fully to this point before, but I cannot forbear to notice

Property must remain under the control of the civil magistrate.

\* Reflections on the Revolution in France, p. 146, Irish edition of Mr. Burke's works, vol. iii.



the inconsistency and contradiction, into which Mr. Burke has run upon this subject; it is the more necessary to be noted, by how much more implicitly the public has of late given an almost unqualified assent to every thing, which that brilliant and learned author has advanced, especially upon the French revolution and the constitution of Great Britain. Happy had it been for his country, if in the paroxysms of his enthusiasm, the effervescence of his genius had not so frequently absorbed the principles of reason and consistency.

BOOK III.  
CHAP. II.

The abuse of a power is no argument against the right to the possession of it: it is of the last consequence in my present enquiry to ascertain, where the supreme right of disposing of property exists, for even the sinful exercise of that right by the *civil* magistrate may in some instances create a conscientious obligation or duty in subjects, which they ought necessarily to know, in order that they may comply with it. I very readily adopt the feelings of Mr. Burke on the infamous conduct of the French nation in seizing and disannexing the whole fund of church property in the manner, in which they did it. \* “I hope  
“*we* shall never be so totally lost to all sense of the duties im-  
“posed upon us by the law of social union, as upon any pre-  
“text of public service to confiscate the goods of a single un-  
“offending citizen. Who but a tyrant, a name expressive of

In whom  
the right of  
disposing of  
all property.

\* Reflections, p. 146.



BOOK III. "every thing, which can vitiate and degrade human nature,  
 CHAP. II. "could think of seizing on the property of men unaccused un-  
 "heard untried by whole descriptions, by hundreds and thou-  
 "sands together; who, that had not lost every trace of huma-  
 "nity could think of casting down men of exalted rank and  
 "sacred function, some of them of an age to call at once for  
 "reverence and compassion, of casting them down from the  
 "highest situation in the commonwealth, wherein they were  
 "maintained by their own landed property to a state of indi-  
 "gence depression and contempt?"

Now although these delegates of the French nation had each of them individually sinned in thus exercising their right or power of disposing of the church property, the fund itself did not thereby change its nature, or cease to be a national fund under the necessary and essential control of the *civil* power, if before it had ever been so. The nature of this fund must therefore be enquired into, and by that will the right of its disposal be known. Mr. Burke says\*, "They have identified the estate  
 "of the church with the mass of private property, of which the  
 "State is not the proprietor, either for use or dominion, but the  
 "guardian only and the regulator."

To form a right opinion or judgment of the church fund we must according to him view it in the same light precisely as

\* Reflections, p. 141.



the private property of individuals: but the supreme and *altum* BOOK III.  
CHAP. II.  
*dominium* of all private property is evidently in the state. If this  
 have not been heretofore satisfactorily proved, Mr. Burke him-  
 self supplies me with the strongest additional arguments in support  
 of it. For says he, “ \* To mortgage the public revenue implies Mortgaging  
of the public  
revenue.  
 “ the sovereign dominion in the fullest sense over the public  
 “ purse. It goes far beyond the trust even of a temporary and  
 “ occasional taxation.” Now no Englishman will deny the right  
 of parliament to raise whatever money they think proper either  
 by *temporary and occasional taxation* or by *mortgage of the public*  
*revenue.*

Church land being a part of the mass of private property is  
 liable to be charged with any public loan. Every mortgage or  
 loan is an absolute deprivation of the property to the extent of  
 the loan. If in raising thirty millions for the expences of the  
 current year, the property of the Archbishop of Canterbury  
 should be charged with taxes to the amount of 100l. per annum  
 towards payment of the interest of the loan, it is to all intents Effects of  
taxation.  
 and purposes a diminution of his annual income by that sum;  
 and is an actual deprivation and appropriation of it to another  
 purpose than that, to which it was before applicable. This is  
 effected without the necessity of any actual consent of the party  
 deprived; which evidently cannot be performed, but by that

\* Reflections, p. 150.



BOOK III.

CHAP. II.

power, which possesses the supreme right of disposing of the property so disannexed and appropriated. The act of thus depriving the Archbishop of Canterbury as well as all other beneficed clergymen proportionally of a part of their income or property produces an effect, by which alone we must judge of the nature of the efficient cause: the effect I allude to is the conscientious obligation, which after this act of the state falls upon every individual of applying the property to the purposes directed by the state, and which consequently obliges the deprived person to comply with and submit to the very act of deprivation. This effect can only be produced by a power lawfully and validly constituted and enabled thereto. In England the King without the consent of lords and commons could not induce this effect upon an individual: nor whilst this country was in communion with the see of Rome, could the pope have imposed the obligation: neither could any foreign power or state have effected it; for no conscientious obligation or duty could arise from their attempt to impose the duty. Wherever then under such an act of supreme power the conscience becomes affected by the non-compliance with its injunctions, it is conclusive, that the power, which directed the act, had a right to make the disposal: for otherwise the property affected would not have suffered a change or transfer; and the consciences of those, who should retain or purloin or divert this property from the purposes intended by the state could not be affected by any detention deprivation or misapplication of it unless the transfer had been real.

That



That the payment of tythes in the old law was of *divine* institution, no man can doubt, who believes the books of Moses; but in believing this, he also believes, that the Jewish theocracy was both a *temporal* and a *spiritual* establishment. The kingdom of Christ is neither *temporal* in its origin means nor end; it is purely *spiritual*: it was founded by the supernatural power of a God Man. The jurisdiction, order and power of its governors were first given immediately by God to his apostles, and are perpetuated by the means of *spiritual* generation: its maintenance and continuance are supported by the divine assistance and protection secured by *his* divine promise, whose word can never fail, "though heaven and earth should pass away. Lo, I am with you even unto the end of time."

BOOK III.  
CHAP. II.

Spirituality  
of the king-  
dom of  
Christ.

In order to see what is of divine institution precept or law, we must first attend to the difference between *natural* and *positive* law or precept. The law of nature or the natural precept is properly speaking the dictate or judgment of human reason, which by means of the light infused into us by the author of our being, directs us to do good and avoid evil. From this general law of nature or *natural* precept are derived the particular precepts or commands, which have obliged all mankind unexceptionably from their creation, and will continue to bind them till the end of time. Such are, that God is to be worshipped; that we are to injure no one; and all the ten commandments (except the particular observance of the Sabbath). *Positive* laws or precepts

Law of  
nature.

General com-  
mandments  
of God.



BOOK III.  
CHAP. II.

Positive laws  
of God and  
of man  
by divine and  
by human  
right.

Divine pre-  
cepts of the  
old and new  
law.

No positive  
law for pay-  
ment of a  
tenth of our  
property.

Every posi-  
tive precept  
indispensable.

cepts are enjoined by and depend upon the free will of God or man: as for example, Christian baptism is a *positive* precept of *God*, the fast of Lent is a *positive* precept of *man*. A *positive* precept then is either of *divine* right, as delivered or enjoined immediately by God; or only of *human* right, which is enacted by man; this may be either *ecclesiastical* or *civil*. The *divine* precepts or injunctions are divided into those of the old and those of the new law. Those of the old law consisted of *moral ceremonial* and *judicial* precepts: those of the *new* comprise the supernatural precepts of revealed faith and the sacraments of the Christian church.

I have given into this sort of pleonasm, merely to prevent if possible my meaning from being again distorted and misrepresented. My thesis therefore is, that in the new law there is no positive *divine* precept or law for the payment of a tenth part of our property or tythes to the church. An assertion of this nature, in direct opposition to the great authorities that have been, and of many more, that might have been quoted, requires undoubtedly something more to support it, than the arguments and reasons of a private individual.

Bold or blasphemous must be the man, who admits, that God has imposed a positive injunction precept or law upon his creatures, from which any of them can be exempted by themselves or their fellow creatures. The wish and intention of complying with



with every conscientious obligation (such certainly is a precept of *divine* institution) is not confined merely to these *divine tything men*: they however by admitting of the divine injunction assume evidently an indispensable obligation and duty of complying with it. Nor can this conviction exist in any man without subjecting him to the conscientious obligation of conforming his practice with his belief; and this will induce a serious and very important examination into the expenditure and application of his property; for in such case by the detention or free use or application of one shilling beyond the nine parts of his clear income, he would defraud disobey and grievously offend his Creator.

BOOK III.  
CHAP. II.

St. Thomas \* expressly says (and after him I have endeavoured to argue) "That tythes now no longer oblige, but according to (or in virtue of) the usage (or common law) of each country and the indigence of the ministers of the gospel: *nunc non amplius obligant, nisi secundum consuetudinem patriæ & indigentiam ministrorum ecclesiæ.*" No man, who understands the first rudiments of human policy or legislation will deny, that each community may lawfully change and alter their laws and customs; whatever these laws therefore enjoin, each member of the state is bounden and obliged by the general ordinance of God's providence to obey and comply with. And if the state do not by a settlement of tythes, or some other provision for the ministers of

How far  
tythes oblige.

\* 2. 2. 9. q. 86. a. 4.



BOOK III. the gospel, prevent the operation of the positive divine precept,  
 CHAP. II. "quæ non obligat, nisi secundum indigentiam ministrorum,"  
 then it obliges the faithful to provide amongst themselves for the  
 decent and proper maintenance and support of their bishop, and  
 the particular clergyman, whom he may institute their minister  
 or parson.

Tythes not  
 due in the  
 new law *jure*  
*divino*.

The general estimation, in which the theological opinion of St. Thomas has been at all times holden in the Catholic church makes his authority a full and satisfactory justification for holding, that tythes are not in the new law due *jure divino*. With what justice then does my Correspondent assert, that I have deviated from the Catholic faith, by saying that church property is liable and subject to the control of the *civil* power of the state? For St. Thomas says, "Decimæ non obligant nisi secundum consuetudinem patriæ;" but that which binds by virtue of a municipal law is necessarily subject to the control of the power, which can alter or repeal the municipal law, as is self-evident: this only is the civil power of the state: if therefore "I appear to be inconsistent with the character of a Catholic, which I profess, and trespass more remarkably (p. 110) by attributing to the rulers of the realm powers over the property of the church," I err with St. Thomas and all those, who admit of his doctrine: for the *rulers of the realm* are those only, who can affect *consuetudinem patriæ*, and according to or by virtue of that alone does the payment of tythes oblige.



My Reverend Correspondent will not, I presume, pretend to assert, that God has granted to the governors of the church any power over the *consuetudines patriæ* or the common law of the land. Upon this principle the learned and impartial Selden said, “\* The common laws of all nations (where feudal laws are, and I think certainly in all Christian nations feudal tythes at this day are found) allow them now and suffer the canons to have no power over them:” And this is strictly consonant with the doctrine of St. Thomas: “Non obligant nisi per consuetudinem patriæ.” † With Catjetan also, continues Selden, “(in that the law for tythes is not moral) Bellarmine, Suarez, Malder bishop of Antwerp and late professor of Louvain and others accord, and make it the *communis opinio theologorum*. ‡ *Debentur solo jure ecclesiastico*” is also the doctrine of other modern divines, who will never be suspected of abandoning any claim beneficial to the church.

BOOK III.

CHAP. II.

Common law not subject to the control of church governors.

I will not assert, that the neglect to observe a divine precept is evidence of its not being obligatory and compulsive: but if we reflect, that for near 1800 years, in every variety of climate habit disposition policy and government a numerous body of the clergy in every country has foregone the advantage of a full tenth of the property of their flocks for want of enforcing the *divine precept*, which I am supposing has been taught

Constant noncompliance with the precept a strong argument against its obligation.

\* Hist. of Tythes, p. 155.

† Ibid. p. 160.

‡ Vid. La Croix, L. 4. De Bonis Cler. n. 1361.



## BOOK III.

## CHAP. II.

by most divines of the Christian church, we must conclude, that what was not insisted upon by the church governors, nor actually paid by the governed, could not have been in fact really enjoined and commanded by a *divine positive precept*. For I again say, that every positive divine precept or injunction is indispensably and unexceptionably obligatory upon all mankind: nor can there be salvation to any man, who knowingly and wilfully neglects and refuses to comply with the *divine injunction*. And yet it will not be too bold to assert, that one solitary instance cannot be alleged, since England has been Christian, in which the obligation of tything has been observed to the extent, to which these divine tything men have carried it.

What the  
tythes of the  
London dio-  
cese would  
amount to.

Suppose the bishop of London were actually to receive for himself and the inferior clergy of his diocese from every person resident within it one clear tenth part of all the produce of the earth, and of all cattle and their profits and increase; a like tenth part of the profits upon all merchandise trade arts sciences labour war hunting &c. a like tenth part of every just increase, which will include the dividends of the funds and the interest of all monies and other pecuniary payments: in a word a full and clear tenth part of all the substance, which God hath given to man, the computation of the tythe or church revenue of the diocese of London according to these *divine* tything men must be calculated, not merely upon the tenth of the gross rental of the lands houses &c. payable to the original landlord, but upon  
all



all the profits of underleases, and all sales of lands and goods *toties quoties*: not only upon the price of the raw materials, but upon that of every conversion of them into a new form or commodity, and upon every change of hands of all commodities or merchandise whatsoever sold by wholesale or retail. Such payments being according to them enjoined by a *positive divine precept*, no man can be exempted from them, *nemo excusatur*. “I speak not this as making a law or forbidding to give more, but requiring that less than a tenth be not consecrated: and not the seller only but the buyer must do this, &c.” From this more detailed view of the conscientious obligations of the resident spiritual subjects of the bishop of London to pay such an enormous sum annually \* for tythes commanded, as they say by a *positive divine precept*, we can only leave it to our readers to draw their own conclusions from the supposed existence of the *divine right* in the London Clergy, their forbearance to enforce it, and the universal and contented neglect or refusal of all men within the diocese to comply with the *positive divine injunction*. For I again defy any man to state one instance of an actual payment of tythes settled upon the principles laid down by these advocates for the divine right of tythes. And it is not to be expected, that

BOOK III.  
CHAP. II.

No instance  
of full tythes  
actually paid.

\* One tenth of all the payments and receipts for merchandise and goods and lands bought and sold within one year in the London diocese, upon the return of all land and its fruits and rents, and of all stocks, funds and monies carrying interest, and of all that man possesses, which is what God gives him, will certainly exceed many millions per ann.



BOOK III.

CHAP. II.

a Christian people should for centuries profess to practise the Christian religion and publicly continually and reflexedly neglect or refuse to submit to and comply with a *positive divine precept and injunction* of that religion.

Ecclesiastical  
immunities.

Before I quit this subject, I cannot refrain from making some annotations upon what my Reverend Correspondent has said concerning *ecclesiastical immunities*, which are properly included in the consideration of the church revenues. Tythes appear only to have been claimed by such of the clergy, as were invested with some spiritual jurisdiction over a part of the flock of Christ; but these immunities are extended to the whole clerical order: and although he candidly allow (p. 204) that “Bellarmine and “Cornelius a Lapide hold, that it is a wrong inference of some of “our canonists, that because Christ and his family were exempt- “ed from paying taxes, that therefore the clergy by *divine right* “are exempted from the same;” yet he takes care to assure us, (p. 202) that “what was granted the Levitical order in the old “law with stronger reason ought to be allowed the more digni- “fied Christian priesthood of the new;” and in support of the clerical claim of immunity from taxes, which his own theologians give up, he quotes what Blackstone said of the laws of nature and of the gospel: “The one is a divine command expressly “declared to be so; the other is only what by the assistance of “human reason we imagine to be that command.” If I therefore take the sense and meaning of the author’s application, he  
would



would infer by it, that *ecclesiastical immunities* are as much by divine institution as the *law of nature*. However he proceeds to inform us (p. 202), that “this doctrine, however strongly countenanced and approved by the œcumenical councils both of Lateran and Trent, never had its place among the defined articles of any Catholic creed ; and when the fathers of those Councils grounded their respective laws of immunity upon it, they referred to what was generally taught by divines.” Notwithstanding this author brings the *countenance and approbation of councils* and the general *doctrines of divines* and his own arguments to prove ecclesiastical immunities as binding as the law of nature, yet by way of explaining “to his readers the distinction of a defined article of faith and of a church precept grounded on a theological opinion,” (p. 203) he favours them with a very sensible quotation from Cornelius a Lapide, viz. “With due and just reason notwithstanding have Kings and Princes paying regard to these words of our Saviour, granted the privilege of exemption to ecclesiastics, who are as it were of the house and family of Christ : and this is all that St. Jerome and the Fathers intend, when they say, that clergymen are exempt from taxes not only by the *human* but by the *divine* law, because there is a foundation in the divine law for Princes granting them such exemption. Lessius, in his second book of Justice, shews that the immunity of the clergy is an human, not a divine, command.”



## BOOK III.

## CHAP. II.

My Correspondent continues (p. 205), "The learned interpreter's (Lessius) words evidently prove, that the immunity of the clergy, concerning which such clamours have been raised is no article of catholic faith, nor has the church at any time laid her commands upon us to believe, that it is of *divine* right. She can only have made it a point of *canonical discipline* by commanding *sovereigns* to grant this privilege to their subjects, of which I shall now speak.

Clerical immunities said to have been enjoined by the church.

"As certain as it is," continues this divine, "that the immunity of the clergy is not a defined article of Catholic faith, so certain it is, that it has been repeatedly *enjoined and enforced* in the strongest manner *by the church*. To say that anathemas have not been employed to compel sovereigns to receive and submit to this ecclesiastical law would be preposterous. The noted Bulla Cœnæ, which within our own memory used to be regularly published every year in Rome on the Thursday immediately preceding Easter Sunday is an incontestable proof of this fact. In the 14th, 15th, 16th, 17th and 18th paragraphs of this bull it is said, We excommunicate and anathematize all (here all invaders of ecclesiastical immunities, trespassers on their persons and property, and co-operators of the same &c. are described at length) of whatever pre-eminence dignity rank condition or state they be, though they should be exalted to the imperial or royal dignity &c. which words plainly shew, without

Bulla Cœnæ.



“ without recurring to the decrees of councils, that the church  
 “ has made this a severe point of ecclesiastical discipline and even  
 “ directed her orders concerning it to sovereigns themselves.”  
 He closes his observations upon this subject with this personal  
 address to me (p. 209)—“ Though I no ways even indirectly  
 “ suspect you of maliciously intending to overturn the authority  
 “ of our church, yet your principles are certainly inimical to the  
 “ spiritual and religious obedience which we owe to it.”

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CHAP. II.

My correspondent has also said (p. 201) “ The Catholic  
 “ belief only has for objects those things, which the church de-  
 “ clares to have been primitively revealed by Jesus Christ;” and  
 although he allow, that the *immunity* of the clergy is no article  
 of Christian faith (p. 205), yet if it had been a positive *divine*  
 precept or law, it certainly must have been revealed (or made  
 known) to us, that we might observe it. So reluctant however  
 is he to abandon his favorite object, that he still professes (p. 206)  
 that “ it is an *uncertainty*, whether they have not a right to it  
 “ by divine law.” From the whole tenor and context of this  
 work, and from the obligations I have assumed by swearing the  
 oath contained in p. 93, 94, I must ever deny, that the church  
 “ has authority to command sovereigns to grant privileges to  
 “ their subjects;” for that would at one blow destroy the mutual  
 independency of the two powers. Temporal sovereigns can  
 only grant temporal privileges: to be commanded by another  
 to exercise power argues a superiority in him that commands:  
 and

Immunities  
of the clergy  
no positive  
precept.



BOOK III.  
CHAP. II.

and therefore if the *temporal* power can be thus commanded by the *spiritual*, the *temporal* power would be neither supreme nor independent; and I hope I have already in part and shall more fully hereafter prove it to be so by the ordinance of God.

Operation of  
the *Bulla*  
*Cænæ*.

As my Reverend Correspondent has so singularly attempted to prove the right of the church to command temporal sovereigns to grant immunities to their clerical subjects from the excommunications and anathemas pronounced against those, who shall not do it by the famous *Bulla Cænæ*, it becomes necessary to say something upon that instrument. But I desire my reader will keep in view the principle which I have endeavoured to demonstrate; that the object, upon which the *spiritual* power (council, pope or bishop) acts must determine the obligation of submitting to its decrees. If therefore the object be *temporal* or *civil*, it is out of the competency or resort of the church to affect it, and all the censures excommunications and anathemas issued in support of such a decree are in no manner operative binding or compulsory\*.

The

\* After what I have already said of my belief of the existence of the *spiritual* power of the church and of its binding quality upon all Christians, I could not consistently admit, that the church could *have repeatedly enjoined and enforced in the strongest manner and made a severe point of ecclesiastical discipline* of such actions, as are contradictory of all the principles I have endeavoured to establish. I am so far from maliciously intending to overturn the authority of the church, that I know no  
furer



\* The author of the *Bulla Cœnæ* is unknown : it began to be published from the time of Martin V. A. D. 1420 : and Pius V. declared, that the old bull should continue in force until the promulgation of a new one. Although pope Ganganeli had good sense enough to stop its annual publication on Maunday Thursday, yet I do not find, that it has ever been repealed or annulled : whatever operation therefore it ever had, it still retains. Now nothing can be more pernicious in its consequences, nor more emphatically expose the confusion of my Correspondent's ideas, than his confounding the bulls of the popes or bishops of Rome upon *civil* and *temporal* matters with the injunctions and precepts of the church of Christ. "As certain as it is, that the immunity of the clergy is not a defined article of Catholic faith, so certain is it, that it has been repeatedly enjoined and enforced in the strongest manner *by the church*." (p. 205.) And after having quoted some words of this noted *Bulla Cœnæ*, which excommunicate and anathematize every rank of mankind, that shall question or resist ecclesiastical immunities &c. he most erroneously adds (p. 206) "which words plainly shew, without recurring to the decrees of councils, that surer method of supporting it, than by an open and unbiaſſed disclosure of the real grounds, upon which it stands. With this view alone do I undertake to consider the nature quality and obligations of this instrument, by which *the church* is said to *have enjoined and enforced in the strongest manner and made a severe point of discipline* of points, which I must for ever disbelieve and disavow.

BOOK III.  
CHAP. II.  
Misrepresentation of it by my Reverend Correspondent.

\* La Croix, lib. vi. pars 11. De Min. Poen. tom. vii.



BOOK III. *“ the church has made this a severe point of ecclesiastical disci-*  
 CHAP. II. *pline and even directed her orders concerning it to sovereigns*  
*“ themselves.”* A sovereign prince is no less subject and liable  
 to the power of *the church*, than the meanest peasant. But since  
 the things enjoined by this *Bulla Cænæ* are thus represented to  
 be enjoined and enforced by the *church of Christ*, and the bull  
 has never been repealed nor annulled, it behoves every man, who  
 pretends to be a child or member of that church, to know how  
 far he is guilty and affected by its terrible anathemas.

Article  
 against taxing  
 without leave  
 of the Pope.

My Reverend Correspondent has I presume as well as the ge-  
 nerality of the English Catholic body solemnly upon his oath re-  
 nounced any *direct* and *indirect temporal* power in the pope over  
 the subjects of this realm: he must therefore have virtually de-  
 clared, that the British parliament may tax all British subjects  
 without the licence of the pope of Rome. Yet we find, *Art. 5,*  
*Bulla Cænæ*, “ Item, we excommunicate and anathematize all  
 “ those, who in their dominions impose or encrease any new  
 “ taxes or rates, unless in such cases as are allowed them by the  
 “ law or the special licence of the apostolical see, or who exact  
 “ them thus forbidden to be imposed or encreased \*.” The like  
 excommunication and anathema is pronounced against every  
 possible description of persons collectively and individually, who

\* Item excommunicamus et anathematizamus omnes, qui in terris suis nova  
 pedagia seu gabellas, preterquam in casibus sibi a jure seu ex speciali sedis apostoli-  
 cæ licentiâ permissis, imponunt vel augent seu imponi vel augeri prohibita exigunt.



shall "directly or indirectly by themselves or others impose or  
 "procure or concur by advice or favor in imposing any gather-  
 "ings tenths talliages prestations and other burdens upon cler-  
 "gymen prelates and other ecclesiastical persons and the goods of  
 "their churches monasteries and other ecclesiastical benefices and  
 "their produce and revenues, without the like special and ex-  
 "press licence of the pope of Rome, and who exact them by  
 "divers refined means, or who shall receive them when thus im-  
 "posed from those, who give and grant them even wilfully and  
 "spontaneously \*."

BOOK III.

CHAP. II.

Item against  
charging  
church lands.

There is, besides many other curious crimes, for which the faith-  
 ful are thus delivered over to Satan contained in this bull one in  
 particular, which in the present circumstances is singularly harsh  
 upon this nation and upon our gracious monarch, who has lately  
 acquired by force of arms † the kingdom of Corsica. "‡ We also

"excommunicate

Against the  
invaders of  
Corsica.

\* Art. 18. Quive collectas, decimas, talleas, præstantias, et alia onera clericis,  
 prælatis, et aliis personis ecclesiasticis ac eorum et ecclesiarum monasteriorum et  
 aliorum beneficiorum ecclesiasticorum bonis, illorumque fructibus, redditibus, et  
 proventibus hujusmodi absque simili Romani pontificis speciali et expressâ licentiâ  
 imponunt, et diversis etiam exquisitis modis exigunt, aut sic imposita, etiam a  
 sponte dantibus, et concedentibus recipiunt.

† It is disputed, whether it be by conquest, cession or treaty.

‡ Art. 20. Item excommunicamus et anathematizamus omnes illos, qui per  
 se seu alios directè vel indirectè sub quocunque titulo vel colore invadere, de-  
 struere, occupare, ac detinere presumpserint in totum vel in partem Almam urbem,



BOOK III. "excommunicate and anathematize all those, who by themselves  
 CHAP. II. "or others directly or indirectly under whatsoever title or pre-  
 "tence shall presume to invade destroy occupy or detain either  
 "in the whole or in part the holy city of Rome, the kingdom  
 "of Sicily, the islands of Sardinia and Corsica &c. and also all  
 "their adherents abettors and defenders or who in any manner  
 "help advise or favour them." If my Reverend Correspondent  
 approve of the present measures of Government, by means of  
 which they have lately invaded occupied and detained the isle  
 of Corsica he will I fear *inter fautores et defensores eorum* incur this  
 dreadful sentence of excommunication and anathema.

To some persons it may appear of little moment, that a king  
 and whole nation should be excommunicated by the Pope, who  
 neither admit nor allow of any supremacy in the See of Rome:  
 but the matter becomes more serious to Roman Catholics,  
 when the tremendous thunder comes to threaten the *tiara* itself;

Conduct of the Pope to our fleets and armies. *feriunt sua tela nocentem.* I have read, that his present Holiness  
 has very recently most humanely liberally and opportunely  
 given every possible succour favor and protection to a British  
 squadron in his ports, and to British troops landed in his terri-  
 tories, whom he supplied with stores provisions ammunition  
 and every necessary article for a fleet and troops in a strange

regnum Siciliae, insulas Sardiniae et Corsicae &c. nec non adherentes, fautores, et  
 defensores eorum, seu illis auxilium consilium vel favorem quomodolibet præ-  
 stantes.

climate



climate upon a hazardous and uncertain expedition. He is further reported to have honoured each land officer with a golden, and each private soldier with a silver medal, as a token of his approbation of their cause, and a wish for the success of their enterprise. I incline to believe, that these very squadron and troops composed the chief part of the excommunicated invaders of Corsica. However I am not a little anxious, that his present Holiness, whose conduct towards my countrymen I admire and applaud, should for this act of humanity and beneficence at least escape the anathematizing effects of the *Bulla Cænæ*; the 20th article of which says, “ \* We also excommunicate and anathematize  
 “ all those, who send or transmit to the Saracens Turks and  
 “ other enemies of the Christian name, or to heretics expressly  
 “ and nominally declared to be such by any sentence of us or  
 “ of this Holy See, any horses arms iron wire tin steel and  
 “ any kind of metal and military weapons cords hemp ropes  
 “ made of hemp, and any other materials, the materials them-  
 “ selves, and any other such things.”

BOOK III.  
 CHAP. II.

Against supplying heretics with any metal, &c.

It is well known, that all Protestants are declared by the church

\* Item excommunicamus & anathematizamus omnes illos, qui ad Saracenos Turcas & alios Christiani nominis hostes & inimicos vel hæreticos *per nostras, sive hujus sanctæ sedis, sententias expresse & nominatim declaratos*, deferunt seu transmittunt equos, arma, ferrum, filum ferri, stannum, chalybem, omniaque alia metallorum genera, atque bellica instrumenta, ligamina, cannabem, funes tam ex ipsâ cannabe quam aliâ quâcunque materiâ, & ipsam materiam, aliaque hujusmodi, &c.

of



## BOOK III.

## CHAP. II.

Protestants  
refuse obedi-  
ence to the  
Pope.

of Rome to be heretics and schismatics; and that, the English forces both naval and military being composed of such, the act of succouring them brings his Holiness within the case of this bull, the very first article of which denounces the same excommunication and anathema against all denominations of heretics and schismatics\* “and those, who determinately withdraw themselves, and recede from their obedience to us and the Roman Pontiff for the time being.” This article also includes those persons, who may receive and encourage them, *eorumque receptatores, fautores, &c.* Hence it is evident, that those, who wilfully and reflexedly disavow the tenets and reject the authority of the See of Rome, must unquestionably be included in those, whom the excommunication of the 17th article is intended to deprive of the means of carrying on war or bearing arms. But if unfortunately his present Holiness should have fallen under the rigor of this sentence, he must be endowed with a new sort of power to free himself from it, in case of his repentance, which I have never hitherto found mentioned by any writer upon papal authority, which will be *self-absolution*.

No absolution from these anathemas but by the Pope himself.

By the 22d article of this very bull it is declared, that “no body can be absolved from the aforesaid sentences by any other person, than by the Pope himself, unless at the hour of

\* Art. 1. Et eos qui se a nostrâ & Romani Pontificis pro tempore existentis obedientiâ pertinaciter subtrahunt vel recedunt.

“ death,



“ death, and not even then without having given security for BOOK III.  
 “ observing the precepts of the church and making satisfac- CHAP. II.  
 “ tion\*.” And in order to shew how emphatically this last  
 mentioned article is intended to be enforced, the bull adds,  
 article 23. “ That if by chance any persons against the tenor  
 “ of these presents should actually have presumed to dispense  
 “ the benefit of absolution to persons entangled (*ensnared, laque-*  
 “ *atis*) in such excommunication and anathema, we complicate *Temporal pro-*  
*cesss denounc-*  
*ed against the*  
*violators of*  
*the bull.*  
 “ them in the sentence of excommunication; and shall pro-  
 “ ceed against them more severely, *spiritually* and *temporally*, as  
 “ we shall find expedient: *Eos excommunicationis sententiâ inno-*  
 “ *damus; gravius contra eos, spiritualiter & temporaliter, prout ex-*  
 “ *pedire noverimus, processuri.*” Those, who have sworn, that they  
 admit of no *temporal* power in the Pope either direct or indi-  
 rect, will with difficulty bring themselves to look upon this bull  
 of the Roman Pontiff, by which he menaces *temporal* processs  
 against subjects of other dominions than the papal territories, a  
 vain and lamentable attempt to assume powers, which were never  
 given by Christ to his apostles, and consequently not to their  
 successors, who are charged with the government of his church  
 upon earth.

\* Art. 22. Cæterùm, a prædictis sententiis nullus per alium quam per Ro-  
 manum Pontificem, nisi in articulo mortis constitutus, nec etiam tunc, nisi de-  
 stando ecclesiæ mandatis & satisfaciendi cautione præstitâ, absolvi possit.



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CHAP. II.

To such inconsiderate unwarrantable and ignorant assertions of private divines are to be attributed most of the defections and schisms from the communion of the Catholic church. There is in every man a fund of internal evidence, which demonstrates to him, that the power given by Christ to church governors is necessarily and obviously confined to *spiritual* objects: when therefore these dictatorial dogmatizers in theology attempt to force men to believe, that *the church of Christ*, that is, the governors of that society, to which Jesus Christ has promised both indefectibility and infallibility, imposes and exacts *such* singular commands precepts and injunctions, as are contained in the *Bulla Cænæ*, it requires more than ordinary sense judgment and virtue, to evade the desperate precipice, to which such folly falsity and indiscretion naturally impel. For without any theological pretensions, as a lay Catholic Englishman, who have with the rest of my brethren sworn, “that I do not believe, that “the Pope of Rome hath, or ought to have any *temporal* or “*civil* jurisdiction power superiority or pre-eminence directly “or indirectly within this realm,” I am bounden by my oath, and that oath has been approved of by my spiritual superiors, to refuse belief and submission to a bull, which excommunicates those, who consent to the power of the British parliament to tax clerical British subjects, and to impose a land tax equally upon Lambeth palace and demesne as upon Richmond or Windsor without the license of the Pope. Those, who

Bullæ Cænæ  
incompatible  
with the Ro-  
man Catho-  
lic's oath.



who bear arms under his majesty in the invasion of Corsica, those, who send military stores ammunition or other merchandise to the Mahometan Saracens the Lutheran Swedes or Schismatic Muscovites, or those, who do not admit that the Pope from his own authority can prosecute a British subject on any account by temporal process. I neither know of precept nor injunction of the *church*, to which I owe not obedience and submission. \* I know that the church obliges me to observe my lawful oath. I hold that oath lawful, which appears so to myself and which my lawful spiritual superiors have approved of taken and recommended to their flocks. I cannot therefore hold those precepts obligatory or binding, which contradict and counteract the words spirit and tendency of my oath.

I expect

\* Strange and unaccountable as these anathematizing decrees of the *Bulla Cœne* may appear to the English reader, and still stranger as it may appear to find a Divine pronouncing them to be obligatory *injunctions of the church of Christ*, it may not be improper to remind him, that the use and practice of public excommunicating sentences and decrees are not confined to the Roman Catholic church. What the precise effects of them may be I leave to the disquisition of divines and canonists. I hope to offend no man, by pointing at some effects, which they do *not* produce: I speak under correction in asserting, that the decrees of the *Bulla Cœne* impose no conscientious obligation upon me to submit to and observe them, as a Roman Catholic Englishman having sworn allegiance to the King of Great Britain, and renounced all temporal power in the church and pope, and owing complete subjection and obedience to my supreme *civil* magistrate, that is, the Parliament of Great Britain. As little do I find my conscience bounden by a long string of canons of the present established

X x

church



BOOK III.  
CHAP. II.

*Bulla Cænæ*  
no act of the  
church of  
Christ.

I expect from the zeal of my Correspondent for the purity of catholic faith and morals, that he will by a public recantation of his error inform the ignorant and assure the doubtful, that the *Bulla Cænæ* is but an instrument published by the Pope of Rome chiefly upon objects out of the competency of his spiritual power, which obliges no Christian (at least out of the papal territories) to any sort of submission whatever: and as he possesses a large share of respect from some of the Roman Catholic body of this kingdom, let him in future exhort them to the observance of such ordinances only, as the *church* really can command and enforce: for no greater injury nor insult can be offered to the *spiritual* power of the church of Christ, than to misrepresent her rights and fix upon her the charge of usurping claims and imposing commands inconsistent with truth equity and justice. Let him hold out to those, who revere and obey the authority of the church such precepts and ordinances only as bind the consciences of the faithful: they

church of England, which deal out excommunication as largely upon all impugners and non-approvers, as any of the bulls or decrees of the church of Rome. Thus, Can. 9. "Whoever shall hereafter separate themselves from the communion of Saints, as it is approved by the Apostles' rule in the church of England and combine themselves together in a new brotherhood &c. *Let him be excommunicate ipso facto.*" The like excommunication *ipso facto* is denounced by the 11th canon against all those, who affirm and maintain, that any other assembly or congregation of the King's subjects, than that of the church of England, may rightly challenge to themselves the name of true and lawful churches, &c. &c.

know



know none of her commands, which they are at liberty to disobey: but a great part of this *bull* the British and Irish Roman Catholics have publicly and solemnly disavowed upon oath: they cannot therefore believe, that it is or ought to be represented as an act of the church of Christ, by which she enjoined and enforced the observance of its contents and imposed them upon her *children as severe points of ecclesiastical discipline.*

BOOK III.

CHAP. II.



OF BISHOP WARBURTON'S ALLIANCE BETWEEN CHURCH  
AND STATE AND OF A TEST LAW.

*Present Necessity for re-considering the Test-Laws, which disable Millions to bear Arms. Warburton's System of Alliance between Church and State. The Estimation in which it is holden by Bishops Hurd and Horsley. Examination of Warburton's preparatory Reasoning. Comparison of Warburton and Rousseau. Denial of both their Opinions, that the Civil Magistrate's Office extends to the Punishment of Atheism and Deism. Inconsistency and Contradiction of both these Authors. Nature of Subscription to the Thirty-nine Articles of the Established Religion. What the Law requires of the Subscribers to them. Opinion of Arch-deacon Paley upon Subscription equivocal and latitudinarian, and contrary to that of Bishop Burnet and others. Nature and Reason of Subscription to Articles of Religion. Nature of Test Laws. General Inconsistency and Contradiction of Bishop Warburton's Reasoning. He fairly draws the Distinction between Constraint and Punishment. Asserts that a Test Law is only justifiable when a Restraint, not so when a Punishment. The Fact of our own Test Law contradicts his Assumption, and falsifies his Conclusions.*



enter not into the causes, that have led to it), which calls loudly for the exertion of every arm and for the union of all hearts throughout its widest extent, it must be admitted, that the observance of the existing *Test Law*, by which millions of his Majesty's subjects are at this moment precluded under disabling penalties from serving their country by land or sea, intimately involves the dearest interests of the state. In this melancholy juncture the unexampled pressure for men and subsidies, the afflicting scarcity of the necessaries of life, and the consequent unavoidable tendency in a suffering people to discontent and violence, cry aloud for fresh consultation and unbiassed reflection upon the impolicy mischief I had almost said *injustice* of continuing laws, that palsy the nerves and deaden the affections of so large a part of the community. I shudder to reflect upon the increased necessity of disclosing the truth upon this important question in the present day, beyond what existed, when I first took this work in hand. At all times however *Melius est ut scandalum oriatur, quam ut verum non dicatur* \*.

BOOK III.  
CHAP. III.

Peculiar necessity at present to investigate this subject.

I have hitherto endeavoured to lay down such principles and to deduce from them such doctrines concerning the original rights and operative effects of *spiritual* and *temporal* authority, as to let in the broadest day-light upon this subject, which has thrown into opposition the most powerful antagonists of different persuasions, as well as rival luminaries of the same church.

\* St. Bernard.

It



BOOK III. It is a gratifying reflection, that upon this question there sub-  
 CHAP. III. sists no difference of opinion between the established church  
 of England and that of Rome. Even Warburton speaking of  
 the two Catholic French divines that have written the most  
 largely upon agreements and alliances between church and state  
 says \*, "The two famous works of De Marca and Bossuet †,  
 "the one the wisest and the other the most sensible divine that  
 "nation ever produced." But what could have induced him  
 to add, that "their religion kept them strangers to the principles  
 "they had laid down; yet the love of their country led them  
 "to the conclusions arising from them?" Neither of those two  
 great men will be supposed by any man, who has read their  
 works, to have been ignorant of any principles, that related to the  
 subject of them. Had they been so in reality, why then should  
 Warburton have allowed (ungraciously as he has done it ‡)  
*That there are papists, who think more justly of the rights of society  
 than even some protestants?*

Before

\* Advertisement to Alliance between Church and State.

† These works are, *Petrus de Marca, De Concordantiâ Sacerdotii & Imperii*;  
 and *Defensio Declarationis quam de Potestate Ecclesiasticâ sanxit Clerus Gallicanus,*  
*19 Martii 1682, ab Illustriss. & Rev. Jacobo Benigno Bossuet Meldensi Episcopo*  
*ex speciali jussu Ludovici Magni Christianissimi Regis scripta & elaborata.*

‡ From the principles, which I have endeavoured to establish, it lies not with  
 me to upbraid others for following the bias of their own *sincere* convictions, how  
 widely soever they may diverge from my own; although I impute no moral  
 guilt.



Before I enter upon the arduous task of examining the grounds truth and consistency of the Warburtonian system of alliance between Church and State, it will be proper to apprise my reader of the degree of estimation, in which it is holden by some of the most learned of his own order. His right reverend biographer informs us (p. 13) "It was not till the year 1736" "that he published the first of those works, on which his great" "reputation is raised. This was *The Alliance between Church*" "*and State*, of which (p. 95) we are told, that in the year 1766" "he gave a new and much improved edition: meaning to leave" "these two great works (*The Alliance and Divine Legation*) now" "wrought up to all the perfection he could bestow upon them," "as legacies to the public, or rather as monuments to posterity" "of" guilt (of which I am not authorised to judge) to the well-meaning adoption of the most absurd and bigoted prejudices: yet I wonder to find them fasten upon enlarged and well informed minds: and I must confess myself lost in astonishment to see Warburton carrying with him to the grave even an enthusiastic belief, that the prophecies relating to Antichrist were to be accomplished in the bishop of Rome. His reverend biographer and panegyrist, the Bishop of Worcester, in his account of the life writings and character of Warburton (p. 106) tells us, that "under this persuasion then in 1768 he gave 500l. in trust to Lord" "Mansfield, Sir Eardly Wilmot, and Mr. C. Yorke for the purpose of founding" "a lecture at Lincoln's Inn in form of a sermon to prove the truth of the re-  
vealed religion in general from the completion of the prophecies in the Old" "and New Testament, which relate to the Christian church, and particularly to" "the apostacy of papal Rome." And (p. 107) he tells us, "It was afterwards" "in



BOOK III. "of his unwearied love of the Christian religion and (for the  
 CHAP. III. "sake of so dear an interest) of the church of England." He  
 Estimation in  
 which War- further tells us (p. 17) that "by the opportunity, which some  
 burton's Alli- "elaborate attempts of his adversaries to overturn it had afford-  
 ance is hold- "ed him, he exerted his whole strength upon it, and has left it  
 en. "in a condition to brave the utmost efforts of future criticism."  
 To his own judgment of this work, Bishop Hurd calls in the  
 testimony of another eminent writer of the prelatical order.  
 "Bishop Warburton, in his Alliance between Church and State,  
 "hath shewn the general good policy of an establishment, and  
 "the necessity of a Test for its security, upon principles which  
 "republicans themselves cannot easily deny. His work is one  
 "in the bishop's contemplation to double the original endowment." We have  
 before us at present, in the person of Mr. Richard Brothers, the unprecedented  
 instance of a man being kept in close confinement for the treasonable practice of  
 giving his own interpretation to these prophecies; which may indeed vary in  
 part from what Bishop Warburton presumed would be put upon them by his  
 lecturers. Roman Catholics rejoice to find such honor done to their doc-  
 trine of submitting private to the church's public interpretation of the scrip-  
 tures, when the Vigornian prelate puts St. Augustine's words to the Mani-  
 cheans into the mouth of his deceased friend to strike dumb and confound some  
 modern *free interpreters of the word*, (p. 119) *Ye who believe what you will in the gos-  
 pel, and disbelieve what you will, assuredly believe not the gospel itself but yourselves only.*  
 This was very consistent with the doctrine of this holy Father, who declared, as  
 I have said before, that he would not submit to the scriptures unless the autho-  
 rity of the church moved him to it. Roman Catholics in all their doubts sub-  
 mit to the declarations of their church upon the revealed word of God.

" of



"of the finest specimens, that are to be found perhaps in any language of scientific reasoning applied to a political subject." BOOK III.  
CHAP. III.

*Doctor Horsley's Review of the Case of the Protestant Dissenters:*  
*pref. London 1787* \*.

I have endeavoured to prove, that the power of the *civil* magistrate was the same before, as it has been since the revelation of Christianity, the same therefore in the heathen as in the Christian; and likewise, that the *spiritual* power is essentially different in its origin and nature from that of the *civil* magistrate, "of whose natures truly to be informed," says Warburton †, "the way is to find out their ends:" and he very summarily ascertains the end of the former: "Whatever therefore refers to the body is in his jurisdiction; whatever to the soul is not ‡." I have attempted to shew, that the conscientious obligation of obeying the civil magistrate was imposed by the general dispensation of God's providence in creating and preserving social man: that this obligation of obeying cannot be extended, till

The nature  
of civil power  
known by its  
ends.

\* The public is indebted to the Bishop of Worcester for a very complete edition of his learned friend's works, and for some account of his life writings and character. Even an exaggerated bias in favour of a departed friend and great man is at most but an amiable lapse of human frailty. Some profound admirers of the erudition and character of Bishop Lowth do not however think with Warburton's biographer, that *his merits* suffer in the least by being (p. 94) *brought into competition with those of the Bishop of Gloucester.*

† Alliance, b. i. ch. 4.

‡ Ibidem.

Y y

the



the power of commanding be enlarged: that as the nature of *civil* power was instituted by God, so necessarily were its ends and objects ascertained by him: man cannot therefore bring under the power or control of the *civil* magistrate those things, which the Deity never delegated to his command. How then can we admit the possibility of Warburton's supposition, when he says \* "No particular scheme or mode of religion was under his care as a magistrate, till he had covenanted and compacted to that purpose." These covenants and compacts are *ex confesso* acts of men; and if they can bring religion under the care of the *civil* magistrate, which was not so before, they will multiply the objects of his power and consequently change the nature of it. Yet nevertheless we know by divine revelation, as well by human evidence, that God instituted a specific legislation for the Jews, and founded the more perfect system of grace for all mankind upon the abolition of the former, and still the nature and consequently the objects and ends of the *civil* magistrate were neither changed nor affected (excepting under the Jewish theocracy) by these divine institutions.

Real tendency of Warburton's positions.

If I understand the first part of his proposition, "No particular scheme or mode of religion was under his care as a magistrate," it clearly means, that the *civil* magistrate being constituted by the community to execute his office, the nature of which was instituted by God, he was not authorised or entitled

\* Alliance, b. i. chap. 4.



either by the divine and original institution of the office, or by virtue of or under the particular delegation of it from the community to him, to act magistratically upon or exercise the power instituted by God and delegated to him by the people over any mode or scheme of religion. The second part of the proposition, "till he had covenanted and compacted to that purpose," if it import any thing, evidently implies, that by his covenant or compact (which is a human act) he became charged with a concern, that fell not under his cognizance or care by the nature of his office nor by the deputation of it to him from the community. The true consequence then, which flows from the Bishop's premises is the direct negative of his grand assumption, which is the subjection of religion to the State. \* "In this alliance, where the religious society is taken under the protection of the State, the supreme magistrate is acknowledged head of the religion." We shall hereafter canvass more particularly his arguments in support of this supremacy of the civil magistrate over religion. Let us however, ere we proceed, freely and fairly examine some of this prelate's preparatory reasonings; for I profess a total incapacity of thinking with the learned Bishop of Rochester, that "this is one of the finest specimens, that are to be found perhaps in any language of scientific reasoning applied to a political subject."

† "Though *religion or the care of the soul* be not within the

\* Lib. ii. c. 11.

† L. i. c. 4.



BOOK III. " province of the magistrate, and consequently matters of doc-

CHAP. III. " trine and opinion hold not of his jurisdiction ; yet this must

The existence and provi-  
dence of God not within  
the resort of  
the civil ma-  
gistrate. " always be understood with an exception of the three funda-  
" mental principles of natural religion, namely, *the being of a*  
" *God, his providence over human affairs, and the natural essential*  
" *difference of moral good and evil.*" I have already said (p. 56)

that whatever according to St. Paul the civil magistrate was obliged to do, was what the light and law of nature directly guided him to do. It was in fact of the heathen and idolatrous magistrate, that the Apostle said, he was " to be a terror to evil  
" doers and a praise to them who do well." Now the heathen and idolatrous magistrate neither admits the *being* of a God, nor his providence over human affairs—*ut patet*. Again : *atheism* formally impugns the first principle of *the being of a God*, as *deism* does the second of *his providence over human affairs*. Warburton himself allows coercive power exclusively to the State, by proving it to be unnecessary and unfit for a religious society \* : and he further says † that " the laws of society can have no further  
" efficacy than to restrain men from open transgression." *Atheism* and *deism* essentially consist in the erroneous convictions of the mind of the atheist or deist : these convictions must be either voluntary and malicious or involuntary and inculpable. In neither case does the civil magistrate possess the means of preventing or repressing the evil, the operations of the mind not being compellible by coercive means, and the *civil* magistrate com-

\* L. i. c. 5.

† L. i. c. 3.



manding no other. Warburton therefore extends too far the control and power of the *civil* magistrate in these two particulars. BOOK III.  
CHAP. III.

The internal full moral guilt of atheism or deism may be committed by an individual, and he may remain completely out of the reach of civil punishment or coercion. Moreover the civil magistrate can only punish an external act of atheism or deism in as much as it breaks in upon the peace and welfare of the society committed to his charge. This fully accords with Warburton's own opinion, where he says, “\* If we cast our eyes on any “ digest of laws we find, that evil actions have their annexed “ punishment denounced, not as they are vices, *i. e.* not in proportion to their deviation from the eternal rule of right: not “ as they are sins, *i. e.* not in proportion to their deviation from “ the extraordinary revealed will of God; which two things “ indeed coincide: but as they are crimes, *i. e.* in proportion to “ their malignant influence on *civil* society.” Could he have said more emphatically, that the *civil* or *temporal* power is confined solely to the peace and welfare of the society, and extends not over *natural* or *revealed* religion?

As Warburton so peremptorily asserts, that the conservation of the principles of *the being of a God* and *his providence over human affairs* falls within the resort of the civil magistrate, I shall be expected to allege my grounds for dissenting from his scien-

Examination  
of Warbur-  
ton's reason-  
ing.

\* Lib. i. c. 4.



BOOK III. tific reasoning, which certain great men have gloried in adopting.  
 CHAP. III. Highly do I esteem the knowledge and talents of the author of the Alliance. But I have undertaken to pursue truth through every avenue, that can lead me to her; and should I discover her even behind the veil of the temple, I will draw it aside, with a respectful, though determined (perhaps trembling) hand.

“ \* Thus it is seen, that though the conservation of these principles belongs to the magistrate, it is not because they make a part of the civil institution (for this would be violating the unity of its end), but as they are the very rock and foundation, on which the edifice of a commonwealth is built.”

Reason cries loudly against the admission of this assertion, “ that the conservation of these principles belongs to the magistrate:” and still more so against the arguments, by which he pretends to support it. “ It is not because they make a part of the civil institution, but as they are the very rock and foundation, on which the edifice of a commonwealth is built.” The Reverend Biographer has said, certainly not without some reason, of this work of his friend (p. 17), “ It required time and attention, even in the most capable of its readers, to apprehend the force of the argumentation: and more than a common share of candour to adopt the conclusion, when they did.” Some time and some attention I have bestowed upon this essay; and I feel disposed to every degree of candour in adopting such conclusions,

\* Lib. i. c. 4. paulò infra.



as I may apprehend the force of. But I have still to learn\*, BOOK III.  
CHAP. III.  
 how the very *rock and foundation, upon which a commonwealth is built* is a separate and distinct concern or charge from the *civil institution of that commonwealth*: how those principles, which constitute this very rock and foundation, make no part of the *civil institution* of that commonwealth, which is built upon it: how the conservation of the foundation of a commonwealth belongs to the magistrate, whilst the conservation of its *civil institution* does not. It was a singular discovery of this superingenious theorist, because "the ædiles at Rome were to see to the support of the foundation as well as to the repairs of the public buildings erected upon them," that "if the care of these principles was within the magistrate's jurisdiction as making a part of the civil institution, his office would extend to the care of souls." Whether the ædiles were charged by the Roman republic to look to the brick stone and mortar, that formed the foundation of the buildings under ground or their elevation above it, I discover a sameness in the source of their commission, a sameness in the nature of their power, a sameness in the objects of it, a sameness in the means of executing it. It is true indeed, that speaking of the particular parts of a building, the foundation is not the superstructure, nor is the superstructure the foundation;

Strange  
parity of the  
Roman  
ædiles.

\* Would I were blest with the penetration of the Archdeacon of Stow (Mr. Towne) who, says the bishop of Worcester (p. 134) "was an ingenious and learned man, and so conversant in the bishop's writings, that he used to say of him, *He understood them better than himself.*"

but



BOOK III. but the complex idea of the material building includes the foun-  
 CHAP. III. dation as well as the superstructure. Thus does the *civil institu-*  
*tion* of a commonwealth comprise its foundation as well as every  
 other part. And indeed with submission to the Reverend Prelate,  
 I must think the epithet *civil* here to be absolutely redundant, for  
 a particular commonwealth, over which a *civil* magistrate has  
 supreme sovereign power, can have no other than a *civil* in-  
 stitution\*.

Atheism and  
 deism the  
 violation of  
 the principles  
 of the *being*  
 and provi-  
 dence of  
 God.

If Warburton's *reasoning* upon this point be *scientific*, I profess  
 that to me the sublime talent is completely an *occult science*, how-  
 ever it may be luminous in the eyes of others. "† If the care of  
 "these principles was within the magistrate's jurisdiction as mak-  
 "ing a part of the *civil* institution, his office would extend to the  
 "care of souls." This surely is a direct avowal, that the office of  
 guarding against *atheism* or *deism* and the conservation of the  
 positive principles, *namely, the being of a God and his providence*

\* My determined resolution to get at truth, wherever she lies, by removing  
 either mist or glare that prevents her from being seen in her primæval colors and  
 naked form, can alone apologize for this species of attempt, when we have been  
 told by a critic of uncommon learning, that Warburton (p. 116) "in his use of  
 "the terms and the *terms* themselves, especially what are called *mixt modes*, and  
 "in the true adjustment of the *predicate* to the *subject* (in which the accuracy of  
 "style chiefly consists) was of all writers the most scrupulously exact."

† It was wisely said by a partial critic, *Nulla est difficultas, nisi penes non intelli-*  
*gentem.*



over human affairs, does of itself *ex natura sua* extend to the care of souls. Who in fact with the use of reason can allow, that *atheism* or *deism* enters into the care of the body? Certainly not he, who has said, “ \* For *this* (viz. the salvation of souls or “ security of man’s future happiness) not depending on outward “ accident or on the will and power of another, as the body and “ goods do, may be as well attained in a state of nature, as in “ civil society; and therefore on the principles here delivered, “ cannot be one of the causes of the institution of civil govern- “ ment, nor consequently one of the ends thereof.” But here I assume, that *the foundation, on which the edifice of a commonwealth is built* must be one of the causes (or rather the only cause) of the institution of the civil government of that commonwealth. Now *ex confesso* the care of these two principles *the existence of a God and his providence over human affairs* would extend to the care of souls, if the principles made part of the *civil institution*, instead of making, as he asserts the *foundation* of the commonwealth. But his reason for denying, that the conservation of these principles *made part of the civil institution* of a commonwealth, is supereminently *scientific*: for if he admitted it, this eagle-eyed speculator “ then “ could see no reason, but that more might with equal pretence “ enter in, till the whole of religion devolved upon him.” A new mode of arguing this! To determine the nature and essence of qualities and duties by the stretch of an individual’s visual of

BOOK III.  
CHAP. III.

The body  
and not the  
soul under  
the civil ma-  
gistrate.

\* L. i. c. 4.

Z z

intellectual



BOOK III. intellectual powers. The plain and simple question in agitation  
 CHAP. III. was : Does the conservation of these principles, *namely, the being of a God and his providence over human affairs* extend to the care of souls or to the care of bodies ? for he before told us, that “ what-  
 “ ever refers to the body is in the magistrate’s jurisdiction, what-  
 “ ever to the soul is not.” But he has made three exceptions \*, two of which we are now examining : of which, he says, “ These  
 “ doctrines it is directly of the magistrate’s office to cherish pro-  
 “ tect and propagate, and all oppugners of them it is as much  
 “ his right and duty to restrain, as any of the most flagrant offen-  
 “ ders against civil peace. For (adds he) the magistrate con-  
 “ cerns himself in the maintenance of these three fundamental  
 “ articles, not as they promote our future happiness, but our pre-  
 “ sent.” I beg leave to suggest, that the true and real reason why the magistrate’s jurisdiction extends not to the care of souls but only to the care of the body, is not because one promotes our *future* and the other our *present* happiness ; but because he is sup-

\* The third exception is *the natural essential difference between good and evil*. This I admit as far, as it comprises all *social* and *relative* duties and obligations, which can by possibility affect either any other individuals or the whole community : but the province of the magistrate rides not over the actions, which affect not the community, although by them the individual may sin grievously and consequently deviate from good and give into evil : Such are all sins, by which he may offend his maker either in thought word deed or omission without affecting others either by the immediate effect, as in murder theft or adultery or by example scandal or danger, as in open blasphemy personal indecency or intoxication, &c.

plied



plied only with a coercive and coactive power of enforcing the compliance with civil injunctions, but not with any means of exercising a *spiritual* power, which was instituted by God to be exercised in a totally different manner. It would not have been unseemly in a divine to have urged the argument, that every thing, which promoted our *future* essentially contributed to our *present* happiness. Thus religion, "the end of which," according to Warburton, "is first to procure the favour of God, and "secondly to advance and improve our own intellectual nature," cannot be denied to promote our *present* happiness: but if the promotion of our *future* or our *present* happiness be the discriminating test of the magistrate's jurisdiction, he must then be driven to admit the conclusion, which he has expressly and formally disavowed, "that then the whole of religion would devolve "upon the magistrate."

BOOK III.  
CHAP. III.

It would fall in too intimately with the dogmatic assurance of the Warburtonian school, were I to treat every person, from whose opinions I differed with disdain or contempt: and my rank is with those, whom his biographer declares to be "incapable "of feeling strongly or writing forcibly." p. 121. I think it however my duty to observe, that the philosophic Citizen of Geneva J. J. Rousseau, whom Warburton has treated with such contemptuous hauteur for having said of him in his *Contrat Social* (l. iv. c. 8.) that "he held Christianity to be the only certain support of a body politic;" and that he (Warburton) "had

Rousseau and  
Warburton.



BOOK III.

CHAP. III.

“ proved, that from the earliest ages no state had ever been established without having religion for its basis,” in his theory of a *Social Contract* has wandered less wide of truth, and fallen into fewer contradictions and incoherences, than the chimerical projector of the *Alliance between Church and State*. The principles, upon which both these philosophers have erected their different theories appear to me to have been false: and it would be a difficult task to decide, whether the Bishop or the Citizen had advanced the more untruths about the revealed law of Christ and the government of his church. They both however appear to me to have run into one common error, which is that of extending the power of the civil magistrate over the care of souls by attributing to him the conservation of the principles of the *being of a God and his providence over human affairs, &c.* The like error has led to the like inconsistency in Rousseau as in Warburton. “ \* Every individual may, while he does not suffer his religious tenets to lead him into any action or any omission, which may be injurious to others, entertain what opinions he pleases, without being controlled in them by the sovereign, who having no jurisdiction in the other world, has no concern with the situation of men in a future life, provided they are good citizens in the present.” This as clearly withdraws from his office every care of souls, as any thing said by Warburton. The Citizen has also spoken as honourably of pure Christian religion, as the

\* *Social Contract*, l. iv. c. 8.



Bishop. " \* There now remains to be considered the religion BOOK III.  
 " of man or Christianity not such as it is at this day, but such as CHAP. III.  
 " the Evangelists taught it, which is very different from the pre-  
 " sent faith. By this religion, HOLY SUBLIME AND TRUE,  
 " mankind, the children of the same God, acknowledged all the  
 " human race as brothers; and the social bond, which united  
 " them dissolved not even in the grave; but this religion having no  
 " connection with the body politic, left the laws possessed of that  
 " force only, which they drew from themselves, and did not give  
 " them any additional power." I remember nothing in the  
 three books of the Alliance more orthodox than this.

Although the Citizen of Geneva attribute to the magistrate the  
 conservation of the same principles as the Prelate of Gloucester,  
 yet it must be allowed, that he does not debase vilify and disfigure  
 the Christian religion so much as the Reverend Prelate by mak-  
 ing the Christian church surrender and alienate her rights to the  
 state. The Philosophic Citizen thinking less favourably of all Both hold a  
false princi-  
ple.  
 mankind, than the Church Dignitary thought of himself, has  
 assumed for fact, that Christianity was no more to be found on  
 earth, and that it had been substituted and replaced by what he  
 calls *civil faith or religion*. Upon this hypothesis the Philosopher  
 raised his faulty theory of a Social Contract. The Prelate assuming  
 the existence and perpetuation of Christian faith and church go-  
 vernment to the end of time, attempted to effectuate and realize

\* Social Contract, l. iv. c. 8.

this



BOOK III. this hypothesis by metamorphosing the church of Christ into a  
 CHAP. III. *civil* institution. \* "There is however a profession of faith merely  
 " *civil*, the articles of which it is the business of the sovereign to  
 " arrange, not precisely as dogmas of religion, but as sentiments  
 " conducive to the well-being of society, and without which, it  
 " is impossible to be either a good citizen or a faithful subject.  
 " The sovereign has no power, by which he can oblige men to  
 " believe the articles of faith, which are thus laid down; but the  
 " unbeliever may be banished the state, not as an impious person,  
 " but as one unfit for that society; because incapable from his  
 " principles of being sincerely attached to equity and the laws;  
 " or of sacrificing, if occasion should require it, his life to his duty  
 " as a citizen. But if any one after he has subscribed to these  
 " dogmas shall conduct himself, as if he did not believe them, he  
 " may be punished with death; for he has committed the greatest  
 " of all crimes; he has lied in the face of the law. The articles  
 " of the *civil* creed must be simple, few in number, precisely  
 " fixed and free from either explanation or comment. The  
 " points insisted on must be a belief in *one God* powerful wise and  
 " benevolent, who beholds all and provides for all, an expectation  
 " of a future life, where the just will be rewarded, and the  
 " wicked punished and a firm confidence in the sanctity of the  
 " social contract and the laws."

Rousseau carries the office of the magistrate to a degree further

\* Social Contract.



even than Warburton, viz. to the belief of future pains and punishments. But how is this consistent with what he had before said, that "the sovereign (or civil magistrate) having no jurisdiction in the other world, has no concern with the situation of men in another life?" Both the Prelate and the Philosopher are determined to bring religion under the care of the magistrate: one does it by supposing that a *civil* religion had supplanted that, which he calls *holy sublime and true*: the other by converting a *divine* into a *human institution*. A bare denial of the assertions of two such men as Warburton and Rousseau will but little satisfy the admirers of either. I shall therefore submit to them my reasons.

BOOK III.  
CHAP. III.

Both bring religion under the magistrate's care.

Few or none of my readers \* will maintain that it is a right, much less a duty in the *civil* magistrate to persecute any man for his religious opinions or practices, provided they interfere not with the safety or welfare of the state. But in holding the unlawfulness of persecution, how can they coherently maintain those principles, which (to demonstration) tend directly to establish the duty of persecution in the civil magistrate, as will appear by a simple chain of reasoning? I will confine myself to the first and broadest of these principles, which Warburton expresses by *the being of a God*, Rousseau by *the belief in one God*.

Their doctrines tend to persecution.

\* My Reverend Correspondent must be excepted, who holds that the magistrate must uphold the Christian revelation by coercion, and may promote it by war and the sword.

The



## BOOK III.

## CHAP. III.

The mind  
cannot be  
coerced.

The magistrate can be obliged to no duty, which he has not the means of complying with : when this duty consists in seeing, that his subjects believe and act according to any given principle, he can only enforce the belief and practice by the coercive means, with which the laws have supplied him : these means being essentially external cannot coerce or operate conviction upon the mind. Now every belief is an act of the mind, and therefore cannot be subject or liable to any power, that possesses not the means of enforcing its commands or injunctions.

Magistratical  
power must  
be used dis-  
cretionally.

When we speak of the *civil* magistrate, we mean one or more human beings, in whom the sovereignty of *civil* power or authority is vested over a particular community. They differ not from other human beings, but by the delegation to them of this sovereign power : as this is delegated for the sole purpose of being exercised, the exercise of it must be regulated by the light of nature and the discretionary judgment of those, in whom it is vested to be exercised. And it is morally impossible, that all civil magistrates of all times, and of all countries should agree in their discretion and judgment, which alone can regulate the exercise of sovereign power, the proper and just execution of which constitutes the whole and sole duty of the magistrate.

Variety of  
men's judg-  
ments upon  
the *being of a*  
*God*.

Supposing (against the fact) that the magistrate had the means of enforcing the belief of the *being of a God*, it is evident he could enforce it no other way, than as he himself conceived it



was to be believed. I am supposing the existence of an all perfect deity, from whence the duty of the magistrate arises. The Christian magistrate then must *cherish protect and propagate* the true worship of God, and *restrain* the heathen and idolater (who is substantially an *atheist*) as much as the robber and murderer. The *heathen* or *idolatrous* magistrate must act in the direct reverse, and *cherish protect and propagate* the belief of divinity existing in sticks stones animals and vegetables, and to him the *Christian* adorer of the true God will be the *most flagrant offender* and punished accordingly. We might enlarge *in infinitum* upon the variety of belief and judgment in the civil magistrate. The *unitarian* magistrate would not esteem the belief of the Trinity as the belief in *one* God: the *trinitarian* magistrate would not hold those to be Christians, who deny the divinity of Jesus Christ. As therefore according to Warburton the magistrate's duty is to *cherish protect and propagate* the belief in God, which he can only do according to his own ideas, and must *restrain as flagrant offenders the oppugners of this belief*, which still must be according to his ideas, it follows evidently, that making it a duty of the civil magistrate to see to and enforce the belief of a God is exposing mankind to be compelled to error, and imposing upon every *civil magistrate* the indispensable duty and obligation of persecuting all dissenters from his own ideas and convictions true or false. If persecution be the consequence of these principles, even a Warburtonian should abandon them.

BOOK III.  
CHAP. III.



BOOK III.

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How to discover the Magistrate's power and jurisdiction.

Let us now endeavour to discover the real nature and extent of the magistrate's jurisdiction and power from something like unequivocal and conclusive evidence. I refer my reader to what I have said before upon this subject, in claim of his admission of the following propositions. Such as the power of the magistrate was instituted by God, such must it ever remain in defiance of all human efforts or contrivances to alter it. As the office itself was instituted by God for a practical end, the means of executing it were adapted by God to the attainment of that end. From the institution ends and means then may we be expected to ascertain what is or what is not within the province of the civil magistrate. I infer therefore, that by divine institution no share or particle whatsoever of the superintendence or care of the soul has *devolved upon the* magistrate. It was absurd then in the Bishop of Gloucester to attempt to determine the question of magistratical jurisdiction over the *care of souls* by the *plus* or the *minus*. "But "if these principles are within his care only as they are the "rock, on which society is erected, there is then abundant reason, why it should not be enlarged." Now enlargement is effected by extending, not by altering the nature of the thing enlarged: Warburton therefore clearly admits, that the conservation of his three fundamental principles does really constitute a duty in the magistrate, which actually extends to the *care of souls*: for he could not otherwise have said, *that it should not be enlarged*, which is an admission of its actual existence in some measure size or degree. Now to apply his own parity to this reasoning, I

merely



merely propose the question, Whether the exercise of the ædilian commission at Rome in directing the repairs of the foundation, or the elevation of the senate house would have proved any difference in the institution nature or quality of that office duty or commission? But it might prove a difference in the extent of it, as there might by possibility have been instituted other officers at Rome (like our commissioners of sewers), to see to the repairs of all subterraneous structures conduits ducts or vaults, who might have had no commission or authority to superintend erections or buildings above ground. If then, as he asserts, it be of *the office of the magistrate to restrain the opponents* of these principles, such as atheists and deists, it will not be denied, that according to this bewildered dogmatizer some degree of the *care of souls* is of the office of the magistrate; and under this impression must it have been, that he said, "If the care of these principles was within the magistrate's jurisdiction as making part of the civil institution, his office would extend to the care of souls, and then I can see no reason but that *more* might with equal reason enter in, till the whole of religion devolved upon him." The idea of *more* entering in, till the *whole* of religion devolved upon the magistrate, could not have arisen in a mind, that was not impressed with a conviction, that *some* care of religion had already devolved upon him.

Warburton's opinion then clearly was, that it was in the office



BOOK III. of the magistrate to cherish protect and propagate these doc-  
 CHAP. III. trines, namely, of the *being of a God and his providence over*  
*human affairs*, and to restrain the oppugners of them, in the  
*atheists and deists*. Although I differ from this opinion, I am  
 but little surpris'd at his maintaining it; but I know no mea-  
 sure to my astonishment, when I find him denying, that such  
 superintendence and conservation tend *to the care of souls*, because  
 forsooth these principles form the *foundation* but not the *civil in-*  
*stitution* of a commonwealth. Were the stones and mortar, which  
 formed the foundations different in their quality from those,  
 which compos'd the elevation of the buildings under the direc-  
 tion of the Roman ædiles? If there be a parity between the  
 commission of these ædiles and that of the civil magistrate, I  
 must press the subtle inventor of the parity with this interroga-  
 tion. How does the specific duty of keeping certain principles  
 become a care of souls in one case and cease to be so in another?  
 That is, How does this care of the magistrate affect the souls of  
 his subjects when it is allowed, that the principles make a part  
 of the *civil* institution of a commonwealth, and affect their bodies  
 or goods only, and not their souls, when they are said to form  
 its foundation? In both cases the duty is performed by the same  
 person, through the same means, upon the same object and to  
 the same ends. Refined indeed then must be his reasoning,  
 who attempts to prove, that this duty in one case extends to the  
*care* of souls, and in the other to that of bodies: yet this attempt  
 has been made by the man, who has also explicitly avowed,

“ That



\* \* That civil and religious societies are essentially different, BOOK III.  
 " is evident from their having different ends and means: the CHAP. III.  
 " ultimate end of one being the care of souls, and that of the  
 " other of bodies: and the means of the one being by *ex-*  
 " ternal actions, and that of the other by *internal* †."

It would be an endless attempt to shew all the false *data* and false conclusions with which Warburton superabounds. His inept attempt to perpetuate the Church of Christ as a visible society, and at the same time by his chimerical alliance to make her surrender her independence to the State, so as to become unable to perform any act of jurisdiction without the permission of the State, is too monstrous to reflect upon with any tolerable degree of forbearance. He is in perpetual variance with himself. At one time he tells us †, " The decreeing matters of discipline and  
 " condemning by expulsion for *matters of doctrine* cannot be  
 " done in alliance without the consent of the State ;" and at ano-

\* Lib. i. c. 5.

† This discrimination of the means, by *external* and *internal* is inaccurate: church governors may certainly use *external* means of enforcing their injunctions, as by excommunication upon the individuals who compose a visible society. All church discipline is *external*. Thus Warburton says elsewhere, " A society without officers, degrees of subordination, and powers adapted to its nature being as inconsistent unintelligible an idea as a house without walls roof or apartments:" The church has no *external coercive* power of enforcing any *means*, but has a power of commanding and enforcing *external* things by conscientious obligations.

† Hurd's edit. p. 134.

ther



BOOK III. ther he asserts with Locke, "That he (the magistrate) who has  
CHAP. III. "nothing to do with the *end*, can have no concern with the *means*.  
"These means are *doctrine* and morals." *Doctrine* therefore by  
the last assertion does not fall within the resort of the magistrate;  
by the first it does. But we must proceed.

End of War-  
burton's  
work.

About the middle of the current century the wishes of some warm friends of *political* liberty to abolish the *test laws* brought forth this work of Warburton, upon the strength and fame of which he first rose into public estimation: in it \* "he attempts  
"to shew the necessity and equity of an established religion and  
"a test law from the essence and end of civil society upon the  
"fundamental principles of the law of nature and nations." Highly as I esteem the learning of the Bishop of Gloucester, as well as that of his admiring supporters and advocates the Bishops of Worcester and Rochester, the nature of my pursuit in this enquiry imposes upon me the unavoidable (though unwelcome) duty of declaring unequivocally to the public, that I can reconcile neither to reason nor truth the principles, upon which this Warburtonian theory is established. An assertion of this nature requires some proof to justify and establish the truth of it.

Numerous  
tests and sub-  
scriptions in  
this country.

No country of Christendom ever did or now does superabound like our own with religious tests and subscriptions. Now as every particular *test* or *subscription* is the key, by which the subscriber is admitted either to the capacity of holding, or to the

\* Hurd's edit. p. 20.



actual enjoyment of some preferment of dignity or emolument, BOOK III.  
CHAP. III.  
 it will generally produce coldness diffidence disaffection jealousy  
 or discontent in all, who thereby are excluded from these advantages either in the church or state. Test *laws* and *subscriptions* therefore have seldom been treated by any writers without strong symptoms of predominant bias either for or against them. On one hand we hear a Warburton cry out\*, “When once we  
 “see sectaries of all kinds supply the civil administration, the  
 “next place to look for them is the pulpit and the stall.” On the other a Priestley thus addresses the members of the established church: † “Must the members of this favourite church of yours  
 “engross all the good things of this life, as well as those of  
 “another, and must we unfortunate dissenters partake of neither?”

If what Warburton emphatically calls his ‡ *cardinal principle* be true, *viz.* that “the state hath only the care of bodies, and the  
 “church only the care of souls,” then cannot the state interfere with the religious opinions or practices of its subjects: but he also admits, that § “depriving men of their civil rights for  
 “matters of opinion as such, is against the law of nature.” However his *demonstration* (as he calls it) of the *necessity and equity of a test law*, I mean presently to take into minute and critical examination.

\* Lib. iii. c. 4.

† Letters to Mr. Burke, p. 132.

‡ Lib. iii. c. 3.

§ Lib. iii. c. 4.



## BOOK III.

## CHAP. III.

Subscription  
to thirty-nine  
articles.

Terms of  
communion.

In the mean while I shall apply some transient observations to the subscription of the thirty-nine articles of the established religion, as many very pointed and important objections have been alleged against it by authors of high respectability. This subscription whenever required evidently operates as a *test law* upon persons, whom it keeps out of the possibility of possessing those advantages, which it admits others unto. I enter not into the substance meaning or tendency of the articles themselves. But presuming them to be expressive of those fundamental doctrines, which that religious society of Christians called the Church of England, professes and maintains, and by the profession and maintenance of which it is distinguished from the church of Rome, and from all other societies of Christians whether Lutheran Calvinistical Socinian or other; I look upon them only as such articles or terms of communion, as every religious society is entitled to hold out and demand of each of its members. The adherence of every free agent to a particular religious society is a free act, and he is presumed by his choice and preference to enter or continue in that society, to adopt and submit to the terms of communion or articles of belief, which form the general credence or what is more emphatically termed *unity of faith* of that church. As no *man* pretends to compel the belief of another in religious opinions, here is no pretext for objecting against a subscription to the terms of communion, which each society chooses to hold out, provided there be no compulsion to become a member of that society. “ For to be a

“ member



“ member of any church a man must assent to the principles of  
 “ union laid down by the society which compose it.” How  
 far the advantages, which accrue to the subscribers ought to be  
 confined to one particular society, which is called the *national* or  
*established* church, has been already in part and will be more  
 fully hereafter discussed. I must however observe, that an in-  
 difference to the doctrines and opinions of its members is for-  
 mally exclusive of the sincerity unity and perpetuity of any  
 church.

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The obvious means therefore of self-preservation are for each  
 religious society to have within itself a center of unity, which  
 connects the members into one body. Confessions of faith have  
 been common to every society of Christians, that ever attempted  
 to form themselves into distinct or permanent bodies. When-  
 ever therefore a body of religious believers uniting together have  
 assumed any form of ecclesiastical or spiritual policy and govern-  
 ment, they always have found the necessity of a ministry to  
 teach preach and administer that faith or word, in which by the  
 terms of their union they all agreed. Subscription then to such  
 articles of communion is emphatically required of all those, who  
 are destined for the office of the ministry: and upon this ground  
 alone I presume it to have been introduced into our universities.

It is also repeatedly required from those, who become charged



## BOOK III.

## CHAP. III.

Subscription  
chiefly de-  
signed for  
those destined  
for the mi-  
nistry.

with the cure of souls, upon the presumed necessity of teaching the same faith throughout the same church. And if in other societies or congregations, the like subscription to articles be not required as in the established church, it may be, because there being no fixt salaries or benefices annexed to the ministers, there is no temptation to others of a different persuasion to introduce new or strange doctrines amongst them. In the Roman Catholic church a very rigorous and severe examination and solemn subscription to the determined articles of divine faith always precede both promotion to orders and the faculty or license to exercise the ministry: and this is as strictly adhered to in countries, where the Roman Catholic religion has no *civil* sanction, as where it is regularly established.

The only  
ground of  
giving a civil  
establishment.

The only possible reason for giving a *civil* establishment to any particular religious system exists in England for giving it to the episcopalian protestant religion: *viz.* because it is professed by the decided majority of the community. So Warburton says, \* “ On reflection, I supposed that the *error*, which “ seduced them might be this, The defenders of an *established reli-  
“ gion* have all along gone on to support it on the motives of truth: “ that is, that religion was to be established and protected, as it “ was the true religion.” Now if a decided majority of the nation concur in one uniform system of religion, that differs from other

\* Lib. iii. c. 4.

systems,



systems, it is only by preserving that uniformity, that their claim to a *civil* establishment or sanction can be supported. Even Warburton claims no other ground for his visionary monster of alliance, than this concurrence of the majority in one system. \* “It subsists just so long as the church thereby *established* maintains its superiority of extent: which when it loses to any considerable degree, *the alliance* becomes void.” Such being then the ground of right title and claim to a *civil* establishment, it behoves me to take some notice of the laws, which require the subscription to these articles, and of the interpretation of these laws by the courts as well as by private, though very respectable individuals.

I find this the more necessary from reading some late publications † against the necessity or propriety of such subscription. These works contain much strength of argument and much knowledge; but with submission to the learned authors, they are not conclusive upon the real question, which I take to be this and this alone; viz. Whether the State giving a *civil* establishment to a particular religion, the participation of the advantages of that establishment ought to be confined to those ministers only of the established religion, who subscribe to the articles of union and communion fixed and agreed upon

Real state of  
the question.

\* L. iii. c. 1.

† Thoughts on Subscriptions to Religious Tests &c. by William Frend M. A.  
—An Enquiry into the Nature of Subscription to the Thirty-nine Articles, by George Dyer A. B.—&c. &c.



BOOK III. by the particular society, to which the *civil* establishment is  
CHAP. III. given? I think, that the slightest degree of cool reflection  
must produce an affirmative assent to this question. A sincere  
dissenting minister of any other persuasion could not undertake  
to preach and administer the word different from his own con-  
victions, and by these he dissents from the established religion;  
much less could he receive a maintenance or salary for teaching  
and administering the word according to the principles and  
doctrines of episcopalian protestantism, and at the same time  
exert his efforts and zeal to discredit or overturn that system.  
The sincere minister of the established religion must of course  
object against the introduction into the ministry of his church  
those, who disapprove of and condemn the articles of communion,  
which he has *bonâ fide* subscribed. The force of these gentle-  
men's arguments bears upon the propriety or lawfulness of giving  
any *civil* establishment to any religious society whatever, which  
is a separate and distinct question, upon which I have already  
said all, that I have to say; viz. that a decided majority of any  
community may at all times lawfully give such a sanction or  
establishment to that religion, which they sincerely and con-  
scientiously adopt: and that it becomes the duty of the *civil*  
*magistrate* to do it, when the refusal of it would expose the  
community to discontent turbulence or confusion. If all were  
of one faith, few then would maintain, that a moderate *civil*  
establishment and fairly equalized stipends tended to debase the  
ministry or corrupt the faith, which Christ revealed. Yet it



ever will be maintained by most men, that *excessive* stipends necessarily vitiate the motives of taking to the ministry, relax the morals, and deaden the zeal of the intended *labourers* in the vineyard.

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Had I not seen so many arguments for the abolition of this subscription grounded upon the impossibility or at least improbability of its being ever *sincere*, delicacy would have shut out every doubtful thought upon the subject. The particular tendency nature and operation of the articles of *communion*, which any religious society holds out to its members, must be a matter of absolute indifference to those, who upon *general and conscientious* principles have refused or declined to become members of it; but they cannot be so to the subscribers of them, as is self-evident. I own myself therefore to have been rather surprised at finding that the necessity of sincerity in subscribing had ever been called in question\*. “It must not be said, that “articles will admit a latitude of interpretation, which were “framed to testify common consent: we may not talk of a “private interpretation of articles, which were designed to prevent a diversity of judgment.” The general and particular end of this enquiry obliges me to investigate and disclose the existing laws of the land upon the subscription to articles, which admit some, and exclude others from such considerable benefits and advantages in this country.

Of the sincerity of subscription to the thirty-nine articles.

\* Dyer on Subscription, p. 11. 2d edit.



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Statutes of  
Elizabeth  
and Charles  
requiring  
subscription.

The two existing acts of parliament, by which the subscription is enjoined are the 13 Eliz. c. 12, intituled, "An Act for the  
" Ministers of the Church to be of sound Religion:" and the  
13th & 14th of Car. II. c. 4, intituled, "An Act for the Uni-  
" formity of public Prayers and Administration of the Sacra-  
" ments, and other Rites and Ceremonies: and for establishing  
" the Form of making ordaining and consecrating Bishops  
" Priests and Deacons in the Church of England." The Ar-  
ticles of Union (5 Ann. c. 8) incorporating an Act made in the  
same session of parliament, intituled, "An Act for securing the  
" Church of England, as by Law established," which confirmed  
these two acts of Elizabeth and Charles II. enacted and de-  
clared, that "all and singular other acts of parliament now in  
" force for the establishment and preservation of the church of  
" England and the doctrine worship discipline and government  
" thereof shall remain and be in full force for ever." And by  
the act of Charles II. all persons presented and collated, or put  
into any ecclesiastical benefice or promotion and the governors  
and heads of every college and hall in the two Universities,  
and of the colleges of Westminster, Winchester, and Eaton are  
enjoined to subscribe to the thirty-nine articles and solemnly  
*declare* "their unfeigned assent and consent to and approbation of  
" all and every thing contained and prescribed in and by the  
" book intituled *The Book of Common Prayer and Administration*  
" *of the Sacraments and other Rites and Ceremonies of the Church*  
" *according to the Use of the Church of England together with the*  
" *Psalter*



“ *Psalter and Psalms of David, pointed as they are to be said or* BOOK III.  
 “ *sung in Churches, and the Form and Manner of making or-* CHAP. III.  
 “ *daining and consecrating of Bishops Priests and Deacons, and the*  
 “ *use of all the prayers rites ceremonies forms and orders in*  
 “ *the said book prescribed and contained.*”

Were we left to our own interpretation of the meaning and operation of these statutes, a shadow of doubt could not be raised, whether the obligation imposed and required by the act, left the subscriber to the articles at liberty to disapprove reject or dissent from any part of them. But my duty forces me to assert, that *nothing short of an absolute unequivocal and unqualified adoption of each and every part of each of the thirty-nine articles can be taken as such a legal subscription as will entitle the subscriber to the advantages accruing from it.* Upon this point with reference to the case of Smith in a *Quare impedit* in the Court of King's Bench Lord Coke says, in his 4th Book of Institutes\*, “ I heard Wray Chief Justice in the King's Bench, Pasch. 23 Eliz. report, that where one Smith subscribed to the said thirty-nine articles of religion, with this addition (*so far forth as the same were agreeable to the word of God*) that it was resolved by him and all the judges of England, that this subscription was not according to the statute of 13 Eliz. because the statute required an *absolute* subscription and this subscription made it *conditional*, and that this act was made for avoiding of diversity

Legal subscription must be absolute and unqualified.

\* Of Ecclesiastical Courts, 324.

“ of



BOOK III. " of opinions, &c. And by this addition, the party might by  
 CHAP. III. " his own private opinion take some of them to be against the  
 " word of God: and by this means diversity of opinions should  
 " not be avoided, which was the scope of the statute; and the  
 " very act itself made touching subscription hereby of none  
 " effect. He must also bring a testimonial from men known to  
 " the bishop, to be of sound religion, a testimonial to be of  
 " honest life and profession of the doctrine expressed in the said  
 " articles: and he ought to be able to answer and render to  
 " the ordinary an account of his faith in Latin &c. Besides  
 " this subscription, when any clerk is admitted and instituted to  
 " any benefice, he is sworn to canonical obedience to his dio-  
 " cesan." As the legal effects of subscribing to these articles  
 are so precisely marked out by this great lawyer, I presume no  
 man will seriously contend, that the law is complied with by  
 any subscription, which does not carry with it a *sincere full and*  
*unequivocal* belief of the articles subscribed to in the whole and  
 in every part. Such as was the opinion of the courts of law  
 upon this subscription, such also appears to have been that of  
 the divine and casuist. Thus the historiographer\* and great  
 defender of the reformed church of England asserts, that " the  
 " thirty-nine articles were something more, than articles of  
 " peace; and the men who subscribed either did believe them  
 " to be true, or else they did grossly prevaricate †."

I should

\* Burnet's Reformation, vol. ii. p. 169.

† I cannot here refrain from noticing a ground of error, upon which most  
 dissenters



I should have thought such discussion nugatory or invidious had I not drawn the necessity for it from the works of a divine, who has given to the public a system of *moral* and *political* philosophy, that has perhaps been read and admired more than any treatise of morality ever circulated through this country. In proportion as I accord with the approving public in rendering justice to the merit of many parts of that work, so do I feel the necessity

dissenters from the church of England combat the propriety utility and necessity of a subscription. This they fall into by confounding the power, which settles the articles with that, which enjoins the subscription to them. So says Dr. Priestley (on Gov. sect. vii.) "At this day articles of faith and rules of church discipline are enacted, and liable to be abrogated by acts of Parliament; whereas all this business was formerly done in synods and general councils, which acknowledged less dependence on the civil power: and low as is my opinion of the persons, who composed the synods and general councils of former times, I cannot help thinking them more competent judges of articles of Christian faith, than any *King of England* assisted or not assisted by an *English Parliament*." The effect of the parliamentary injunction must be clearly seen by every man, who reflects that the necessity of this condition, which the legislature annexes to the enjoyment of those temporalities, which it allows to clergymen and ministers of a certain description, operates only to the exclusion of such as are of another description. Thus the *civil magistrate* supposes a clerk before he is inducted, to believe the faith of that church, of which he is made a minister, and to have been rightly ordained according to the rites of that church, and also to have received from his bishop *spiritual* jurisdiction over his particular parish: but he neither settles teaches nor dictates the faith to the individual; he meddles not with his ordination, nor interferes with the Bishop in the act of institution:



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necessity of noticing any deviation of the author from truth upon a question, which so deeply counteracts the law, affects the consciences and involves the respectability of that body of men, to which respectability is supereminently necessary for enabling them to answer the great ends of their vocation.

Mr. Paley in the xxiid chapter of his 1st book undertakes to give us a full and satisfactory eclaircissement of the nature of this subscription, and a casuistical salve for the consciences of institution: of the two latter facts he requires a certificate from the persons, who are exclusively entitled or authorised to confer the *order* and give the *jurisdiction* or the *cure of souls*, which is clearly out of the resort of the *civil* magistrate: of the first fact, which is the belief of certain articles of religion, no certificate of a third person can possibly ascertain it; he has therefore recourse to the only evidence, that can be had, which is the confession and avowal of the party himself: he is therefore called upon to certify his belief to the articles by his subscription. If this subscription can be proved to have been equivocal partial insincere or conditional, it declares the living or benefice *ipso facto* vacant, the presentation void and the right of the prævaricating subscriber absolutely null to the temporalities, or those advantages, which he had received from the State. This is the only security, which the *civil magistrate* can afford to the preservation and protection of that religion, which by the decided will of the majority he is either called upon or obliged to give *civil* sanction unto. When the British legislature enacts the subscription to the Apostles Nicene and Anathasian creeds, it cannot be said, that it either frames confirms approves of or commands submission to them: it only requires an unequivocal proof from those, who are to teach these very creeds to their respective congregations, that they believe them themselves.

those,



those, who subscribe either without or against their convictions BOOK III.  
CHAP. III. of the truth of those articles, when they declare their *unfeigned assent and consent to and approbation of them*. There is nothing either intricate or refined in his doctrine: as it is plain and simple, it needs only to be stated, not argued upon.

He sets out with assuring us, that “ subscription to articles of religion, though no more than a *declaration* of the subscriber’s assent may properly enough be considered in connection with the subject of oaths, because it is governed by the same rule of interpretation: which rule is the *animus imponentis*. The enquiry therefore concerning subscription will be, *Quis imposuit et quo animo?* ”

We need not enter very deeply into ethics and morality to extract this simple and uncontrovertible proposition, that no man can on any occasion declare without prevarication and falsehood his *assent and consent to and approbation of those* articles, which he neither comprehends believes nor approves of.

As for the rule of the *animus imponentis* being *the measure of the juror’s duty*, I have already said something upon it (p. 108), and shall hereafter be under the necessity of saying much more in the last chapter of this book in treating of the oath of supremacy. I shall here barely state the only ground, upon which in my opinion a juror can lawfully and conscientiously take any oath

The *animus imponentis* no rule of interpretation.



BOOK III. whatever: this is, *the sincere conviction of the juror of the truth of*  
 CHAP. III. *the oath according to the usual common and accepted import of the words and terms, in which the oath is expressed.* Provided therefore that the *animus imponentis* be not clearly and unequivocally expressed in the terms of the oath, the juror will not be justified in taking it, whilst he understands it differently from those, who impose it. It is their duty to adapt their words to their meaning. There can be no fair meaning, which may not be unequivocally expressed in the English language, and no captious meaning can be the subject or ground of a lawful oath.

Who imposes  
the subscrip-  
tion.

Mr Paley then very truly informs us, that neither the bishop who receives the subscription, nor the compilers of the thirty-nine articles are the imposers of the subscription: but that the legislature of the 13th of Eliz. is the imposer, whose intention the subscriber is bound to satisfy. I should have said upon this subject, that the imposer of this subscription is the existing legislature of the day, which wills the continuance of the law passed in the 13th of Eliz. and lastly confirmed in the 5th of Anne: for the immediate obligation of every law is imposed by the will of the existing legislature, which expresses the sense of the existing community, whom they represent.

Mr Paley's  
reasons for  
subscribing  
what is not  
believed or  
approved of.

"They who contend," says he, "that nothing less can justify  
 "subscription to the thirty-nine articles, than the actual belief of  
 "each and every separate proposition contained in them, must  
 "suppose,



“suppose, that the legislature expected the consent of ten thousand  
“men, and that in perpetual succession, not to one controverted  
“proposition, but to many hundreds,” &c.

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To this flimsy unprincipled reason for evading the necessity of a *sincere* and *unfeigned* subscription, I answer first as a lawyer by repeating the words of the Court after Lord Coke: *the act was made for avoiding diversity of opinions.* I answer secondly as a Christian, who believes, that Christ came upon earth to teach and reveal to men a new system of *divine* faith: in which, if there be *truth*, there is *unity*. Articles therefore holden out as expressive of this *true* faith, which is therefore *one*, are not open to that *incurable diversity of human opinion*, which Mr Paley presumes the legislature meant not to remove. I much wonder how the divine should have forgotten, that the question of sincerity in subscribing arose upon the religious belief and practice of those clergymen, who are supposed to be according to their conscientious convictions members of the *\*visible church of Christ as a congregation of faithful, in the which the pure word of God is preached*; and that the articles themselves were framed and agreed upon, and are regularly subscribed to, *for avoiding of diversities of opinions and for the establishing of consent touching true religion.* These surely are positive grounds and motives for subscribing; and yet this reverend *moral* and *political* philosopher, has frittered away the conditions of complying with the law of subscription, into

Answers to them.

Ground of legal subscription positive.

\* Art. xix of religion.



BOOK III. three negative qualities, which are as fully applicable to a sub-  
 CHAP. III. scription to the Thalmud or the Coran, as to the thirty-nine ar-  
 ticles of the church of England.

Mr Paley's  
 three nega-  
 tive condi-  
 tions for sub-  
 scribing.

I know not how this reverend divine could *gravely* enume-  
 rate " first all abettors of popery; 2dly anabaptists, who were at  
 " that time a powerful party on the continent; 3dly, the puri-  
 " tans, who were hostile to an episcopal constitution; and in gene-  
 " ral the members of such leading sects or foreign establishments  
 " as threatened to overthrow our own," as the persons who could  
 not subscribe to the thirty-nine articles. " Whoever finds himself  
 " within these descriptions ought not to subscribe." Here indeed  
 is a very wide net to take in all mankind indefinitely, except  
 abettors of popery anabaptists puritans and those, who threaten  
 to destroy the protestant establishment. I doubt whether the re-  
 verend archdeacon will find many of his brethren equally ready  
 to enlarge the ministry so much by the admission amongst them of  
 any person, who is thus by mere negatives qualified to subscribe.  
 The atheist deist Moravian Greek schismatic Lutheran Socinian  
 Arian and every other person (not being an abettor of popery  
 anabaptist or puritan) according to Mr. Paley is justified in sub-  
 scribing to the thirty-nine articles, because forsooth, *the consent of*  
*ten thousand men in perpetual succession is not to be expected to many*  
*hundred propositions.* This latitudinarian indifference to the tenets  
 and belief of the teachers of any distinct religious society will  
 be found irreconcilable with the fundamental principle of their  
 existence



existence union and preservation common and essential to every such society. This is only a revival of a former principle preached up at the beginning of the last century by some separatists or persons not very staunchly attached to the established church of England, of which Bishop Burnet speaks in the following manner: (Hist. Reform. part ii. b. i. p. 169.) "Only  
" one notion that has been since taken up by some, seems not  
" to have been thought of; which is, that these were rather  
" articles of peace than of belief: so that the subscribing was rather a compromise not to teach any doctrine contrary to  
" them, than a declaration that they believed according to them.  
" There appears no reason for this conceit, no such thing being  
" then declared: so that those, who subscribed, did either believe  
" them to be true, or else they did grossly prevaricate."

" To be a member of any church (said Mr. Frend \*) a  
" man must necessarily assent to the principles of union laid  
" down by the society, which compose it." With reference to ministers and teachers, the established church acts upon this principle by requiring from them this subscription: but it is singular, that for the admission into the established church, so far at least as concerns Roman Catholics conforming to it, nothing more than a negative condition is required of them, which is a renunciation of their supposed former errors. Nor do I know

Only a negative test demanded of Roman Catholics conforming to the Protestant religion.

\* On Subscript. ubi supra.



BOOK III. of any species of positive religious test required of a member of  
 CHAP. III. the church of England, till some *civil* benefit in the State be to  
 be procured by it. Of this practice I will merely say, that in  
 justice and equity every test should be adapted to the nature  
 of the office, for which it qualifies. Every *civil* employ-  
 ment under government pre-supposes the allegiance of the per-  
 son to be employed: a *test* therefore is rightly required of him  
 by an oath of allegiance. Every minister of the church of  
 England, who is to preach and teach the faith of that church is  
 rightly and justly called upon to give a *test* of his knowledge and  
 belief of what he is designed to teach, and this is done by his  
 subscription to the thirty-nine articles of their religion. But  
 when we reflect, that to become a professor of mathematics,  
 or of the Greek tongue, or to be a lecturer upon the laws or  
 even to be matriculated in one of our universities, a *test* is re-  
 quired of unfeigned assent and consent to and approbation of  
 thirty-nine articles of religion; that to vote for a member of parlia-  
 ment, a test is proposed, by which the elector qualifies himself  
 by renouncing his belief of the real presence of Christ's body in  
 the Eucharist; that to become a member of the corporation of  
 a borough, the sacrament must be first taken according to the rites  
 of the church of England as a qualifying test: and that this same  
 awful ceremony is required as the *test* from every individual, that  
 would serve his country either by sea or land, I know not whe-  
 ther more to be astonished at the reasons for enacting, or amazed

Proper na-  
 ture of tests.

at



at the motives for continuing such laws in force. Upon this BOOK III.  
CHAP. III. Mr. Paley has spoken with great fairness and truth, \* "I perceive no reason, why men of different religious persuasions may not sit upon the same bench, deliberate in the same council, or fight in the same ranks, as well as men of various or opposite opinions upon any controverted topic of natural philosophy history or ethics." What Warburton's opinion was of this necessary adaptation of every *test* to the nature of the qualification we shall take into consideration, as we proceed in our discussion of his theory.

As to the necessity and equity of a *test law*, from what I have already said it will essentially follow, that it is not only within the ressort but the duty of the *civil* magistrate to require it in all cases, in which the peace and welfare of the community call for it. The truth or falsity of the belief of those, whom the test excludes or admits has nothing to do with the right and duty of establishing it. If the parties excluded by a test law be reasonably presumed by the State to be obnoxious or mischievous or dangerous to be admitted into the common participation of its advantages, then as long as such reasonable presumption or conviction lasts, so long and no longer is it the duty of the *civil* magistrate to keep on footing a *test law*: for this Reverend Prelate agrees with all his adversaries, that opinion and

Of the necessity and equity of a test law.

\* Lib. ii. c. 10.



BOOK III. conscience are out of the ressort of the *civil* power: nothing  
 CHAP. III. short then of their reasonable conviction, that the exclusion  
 of the recusants from the benefits of the State is requisite to pre-  
 serve the peace union and welfare of the community can justify  
 the subsistence of a test law.

*Non-confor-*  
*mity not de-*  
*structive of*  
*the welfare*  
*of the State.*

Whoever believes (as every non-conformist with the esta-  
 blished religion must) that his non-conformity is not essentially  
 destructive of the peace union and welfare of the community,  
 must refuse credit to this Prelate's assertions, that "the necessity  
 "and equity of a test law may be shewn from the essence and  
 "end of civil society upon the fundamental principles of the law  
 "of nature and nations," nor can he admit that *a test law is the*  
*necessary consequence of a civil establishment of religion:* or that a  
*test law* does not operate a *positive hardship and punishment upon*  
*those, whom it excludes from the advantages of the State.* But the  
*non-conformist* does not therefore question the right and duty  
 of the legislature to impose in certain circumstances this hardship  
 and punishment upon some for the general good of the whole.

Where there  
 is a necessity  
 for a test law.

The judgment of the civil magistrate upon the exigency of these  
 circumstances must be regulated by his own discretion and  
 conviction, which will generally therefore differ from the  
 judgment and feeling of the sufferers, who will of course be  
 the minority of the community. Although the judgment of the  
 excluded dissenter will probably differ from that of the majority  
 upon



upon the expediency or necessity of applying the principle, yet BOOK III.  
CHAP. III.  
will he not therefore deny the principle itself.

This visionary Theorist in framing his argument upon the necessity of a *test law* overlooked the general facts attending the *civil* establishment of religion in his own country. \* “A test law,” says he, “is an unavoidable consequence springing from an established church in every place, where there are diversities of religion:” and by a *test law*, he understands “some sufficient proof or evidence required from those admitted into the administration of public affairs, that they are members of the religion established by law.” Warburton’s  
idea of a test  
law.

Before the reformation a test law was never thought of, because there were no notable or considerable diversities of religion in the nation. But since the reformation, as there has been a great variety of religions in the nation, it will be proper to consider how the established religion has from the year 1535, which was the commencement of the reformation, constantly produced this *unavoidable consequence* a *test law*, which according to the Bishop’s definition “is some sufficient proof or evidence of a person’s being of the religion established by law:” and this must be some positive act of an individual expressive of his own adoption of submission to or conformity with that religion. An

\* Page 202, 203.



## BOOK III.

## CHAP. III.

What is and  
what is not a  
test law ac-  
cording to  
Warburton.

oath of allegiance then is no *test law* in Warburton's sense of a *test law*; for it is not requisite to be an episcopalian protestant to be a faithful subject of his majesty. The abjuration of the right of the Stuart family to the throne is no such *test law*, as it may be made with full sincerity by a Quaker or an Unitarian, who are not of the religion established by law. The renunciation of the Pope's supremacy and of transubstantiation is no such *test law*, because it may be cordially made by an Anabaptist or Presbyterian, neither of whom are of the religion established by law. I have indeed met with no other such *test law* in our statutes (our common law knows nothing of such tests) besides that required by the *corporation* and *test acts* both passed in the reign of Car. II. the first in 1661, the second in 1675, which require the sacrament to be taken according to the rites of the church of England: the legislature presuming this solemn act of religion to be evidence, that the person conforming to it is a *bona fide*\* member of the established church.

Sacramental  
test.

*If a test law be an unavoidable consequence springing from an*

\* Mr. Paley's Morality would go to justify that monstrous and barefaced system of prevarication, which for the honor of the present age I presume out of use called *Occasional Conformity*. According to his principle, why should not any man take this test, to prove himself no Abettor of popery, Anabaptist or Puritan if he be not *so* in reality? The *animus imponentis* is surely more directory of the intent and operation of such an action, than of an oath or subscription to a set of words, that are intelligible to the juror or subscriber.

*established*



*established church, where there are diversities of religion, then must it be admitted, that such established religion is the cause producing the test law: but no cause can exist without producing its unavoidable consequence or effect: and yet it is an allowed fact, that the Protestant religion was established for more than a whole century, where there were diversities of religion, without any test law, though this scientific Reasoner assert it to be its necessary and unavoidable consequence. Although it may be urged, that every necessary and unavoidable consequence is not immediately produced, yet the intervention of 136 years between the existence of the cause and the production of what he calls the effect, gives more than room for scepticism upon the unavoidable necessity of the consequence.*

BOOK III.  
CHAP. III.  
A test law  
not the un-  
avoidable  
consequence  
of an esta-  
blished reli-  
gion.

Consistently with the propositions, which I have before endeavoured to prove, I must necessarily conclude, that Warburton fondly grounded his necessity of a *test law* upon the grossest misconception of the nature of a *civil* establishment of religion. To speak indeed without reserve, his system of alliance between church and state is absolutely irreconcilable with the first principles of *spiritual* and *temporal* power: it is in fact a monstrous *farrago* of truth and falsehood, erudition and ignorance, mystery and plausibility, reason and sophistry, faith and infidelity, proof and contradiction. To give to such a treatise a full and minute answer would require a treatise almost as long as the work itself.

Gross mis-  
conceptions  
of Warbur-  
ton.

One



## BOOK III.

## CHAP. III.

Warburton's  
analysis of  
his own work.

One material objection against an attempt to give a just and curtailed idea of a work of theory and argument is obviated in the present instance by the author's having delineated his own fondling in the following miniature.

“ \* He first shewed the use of religion to society, from  
“ the experience and practice of all ages: he inquired from  
“ whence the use arose, and found it to be from certain original  
“ defects in the very essence and plan of civil society. He went  
“ on to the nature of religion; and shewed how, and for what  
“ causes, it constituted a society; and then, from the natures of  
“ the *two societies*, he collected, that the object of the civil is only  
“ the *body* and its interests; and the object of the religious, only  
“ the soul. Hence he concluded, that both societies are so-  
“ vereign, and independent; because they arise not out of one  
“ another; and because, as they are concerned in contrary pro-  
“ vices, they can never meet to clash; the sameness of *ori-*  
“ *ginal*, or the sameness of *administration*, being the only causes  
“ which can bring one of two distinct societies, into natural sub-  
“ jection to the other.

Union of the  
two societies.

“ To apply religion therefore to the service of civil society,  
“ in the best manner it is capable of being applied, he shewed  
“ it was necessary that the two societies should *unite*: for each

\* Postscript to the fourth edition of the Alliance, p. 269, Hurd's edit.

“ being



“being sovereign and independent, there was no other way of  
 “applying the service of religion in any solid or effectual man-  
 “ner. But no such union could arise but from *free compact* and  
 “convention: and free convention is never likely to happen,  
 “unless each society has its mutual motives, and mutual advan-  
 “tages. The author therefore, from what he had laid down  
 “of the natures of the two societies, explained what those mo-  
 “tives and advantages were. Whence it appeared that all the  
 “rights, privileges, and prerogatives of the two societies thus  
 “united, with the civil magistrate at their head were indeed  
 “those very rights, privileges, and prerogatives, which we find  
 “established and enjoyed under our present constitution in  
 “church and state: the result of this was, that an *established*  
 “church and a *free toleration* are made perfectly to agree by the  
 “medium of a test law. This law therefore the author, in  
 “the last place, proceeded to vindicate, on the same general  
 “principles of the law of nature and nations. This, says  
 “he, is a true though short analysis of the alliance between  
 “church and state, with the principles on which the theory is  
 “conducted.”

BOOK III.  
 CHAP. III.

The extravagant wildness and singularity of Warburton's  
 theory naturally deprive him of many associates or supporters.  
 Not even his favorite disciple, though *juratus in verba magistri*,  
 has attempted to harmonize his master's doctrines with those of  
 his predecessors contemporaries or successors. As he stands then

Warburton  
 singular in  
 his doctrines.



BOOK III. upon his own isolated merits, it will appear as little singular,  
CHAP. III. that Bolingbroke, Rousseau, the Independent Whig, all Presbyterian writers, the great De Marca, Bossuet and all other Roman Catholic theologians should differ from him, as the great Locke, Hooker, Pearson, Thorndyke, Potter, Fleetwood, Rogers and most other divines of his own \* church. The Warburtonian system will never command submission upon the strength of authority: nor will, I ween, his school increase upon that of reason and truth.

Futility of  
 the Warbur-  
 tonian system.

If the ideas, which I have before expressed of the church of Christ and of its government be true (these were once common both to the Protestant and the Roman Catholic), then falls to pieces the whole machinery of the Warburtonian fœderacy. If the church of Christ be established by *divine institution*, it can suffer no alteration in its essence or nature by human means: if it be a visible society, it must have a government; if it have a government, the constitution of its governors must be uniform and perpetual: if the church of Christ be sovereign and independent of all other societies and governments, it is so from

\* Amongst these also must I reckon Mr. Paley, who says (lib. i. c. 10.)  
 "Every other idea and every other end, that have been mixed with this, as the  
 "making of the church an engine, or even an *ally* of the State: converting it  
 "into the means of strengthening or of diffusing influence or regarding it as a  
 "support of regal in opposition to popular forms of government have served only  
 "to debase the institution, and to introduce into it numerous corruptions and  
 "abuses."

the



the nature of the objects, which are affected by the *spiritual* power: no process of time nor human circumstances can change the nature of the objects of the *spiritual* or the *temporal* power: therefore the different powers can never be brought to act upon any other, than their own proper objects: the independence of each power being essential to its nature must be *absolute*. Mutual concessions then between church and state are impossible: for mutual concession imports the capacity not only of granting but of holding in both parties: now the church cannot hold power over *temporal* things; nor is the state capable of holding power over *spiritual* things. I am more than astonished then, when I see this dogmatic theorist\* examining and determining “what the church receives from the state and what the church “gives to it.” And were I not inured to his arrogant and barefaced monopoly of self-contradiction, my amazement would be unbounded, when I find him† pronouncing, that by this alliance, “the Church resigns up her independency, and makes “the magistrate her supreme head, without whose approba- “tion and consent she can administer transact and decree “nothing.” And (p. 133) he further adds, “All power of ex- “ternal jurisdiction is originally in the king either formally to “exercise or at least virtually to derive.” Nothing surely but the most unaccountable inattention to or ignorance of the difference between *order* and *jurisdiction* could have betrayed a man

The church can neither give up her own nor receive new rights from the state.

Inattention to the difference between order and jurisdiction.

\* Book ii. ch. 3.

† Book ii. ch. 3, p. 130.



BOOK III. of his information into such inconsistency \*. I hope I have al-  
 CHAP. III. ready sufficiently proved, that our laws have admitted and con-

The church  
 cannot give  
 up her inde-  
 pendency.

stantly kept in view this essential difference. But I cannot re-  
 frain from observing, that as it is *mission* or *jurisdiction* alone,  
 which constitutes church governors, to place that mission or  
*jurisdiction* in the civil magistrate is absolutely to annihilate the  
*spiritual* government of the church of Christ and to swallow up  
 the *spiritual* in the *civil* power: that for the church to resign  
 her independency is to attempt (though in vain) to alter the  
 nature,

\* In this very essential principle of church government Bishop Warburton  
 differs again from the great and excellent Hooker, as he calls him. Hooker  
 says, (Eccl. Pol. l. vi. p. 374, ed. 1705) "Besides that spiritual power which is of  
 "order, and was instituted for performance of those duties, whereof there hath  
 "been speech already had, there is in the church no less necessary a second  
 "kind, which we call the power of *jurisdiction*. When the Apostle doth  
 "speak of ruling the church of God and of receiving accusations, his words  
 "have evident reference to the power of *jurisdiction*. By this therefore we  
 "see a manifest difference acknowledged between the power of ecclesiastical  
 "order and the power of *jurisdiction* ecclesiastical. The spiritual power of  
 "the church being such as neither can be challenged by right of nature, nor  
 "could by human authority be instituted because the forces and effects thereof  
 "are supernatural and divine, we are to make no doubt or question, but that  
 "from him, which is the head it hath descended unto us that are the body  
 now invested therewith. He gave it for the benefit and good of souls, as  
 a mean to keep them in the path, which leadeth unto endless felicity &c.  
 "Therefore conclude, that spiritual authority is a power, which Christ has  
 "given to be used over them, which are subject unto it for the eternal good  
 "of



nature, which Christ gave her: and “to administer tranfact and  
 “decree nothing without the approbation and allowance of the  
 “state,” is to admit the independent right and absolute duty in the  
 church governors to administer tranfact and decree upon sub-  
 jects of its own competence, and at the same time to renounce  
 and abandon them to those, who can neither hold nor exercise  
 them. It is singular, that these assertions should have been made  
 by the person, who has so repeatedly said, “that the state has  
 “nothing to do with the care of souls nor the church with the  
 “care of bodies.” p. 137.

It appears also inexplicable, that this prelate, who is so ex-  
 “of their souls according to his own most sacred laws and the wholesome  
 “positive constitutions of his church.” This spiritual jurisdiction or mission,  
 which Hooker truly says could not by human authority be instituted, but  
 descended from Christ to his church, cannot as Warburton asserts, be “ori-  
 “ginally in the king either formally to exercise or virtually to derive.” All  
 the power, which is in the king of Great Britain is only a certain part of that  
 supreme and sovereign civil power, which is in the people of Great Britain.  
 To the people therefore must we look for the origin or derivation of any  
 power, that can be supposed to exist in the crown. As the king then has  
 no power, which is not given to him by the people, he possesses none, but  
 by human institution: but as according to Hooker and all other sound di-  
 vines, *spiritual* jurisdiction cannot be instituted by human authority, therefore  
 it cannot be derived from the people to the king; and the king has no au-  
 thority, but what he derives from the people. So Warburton himself elsewhere  
 confesses, “that the independency of the Christian church” (which is properly  
 its sovereign jurisdiction) “is derived from higher authority than what the  
 “state claims for any of its rights.”



BOOK III.

CHAP. III.

Objection of  
a lay source  
urged against  
the church of  
England.

Act of Hen.  
VIII. esta-  
blishing the  
supremacy.

The church  
no political  
but a reli-  
gious society.

toll'd by his biographer for his affectionate admiration of the church of England, should have admitted in full force the grand objection urged against her, viz. that of her having a mere civil and *lay* head, and deriving her spiritual power from a temporal source : for quoting the 26th Hen. VIII. c. 1, which declares, " that the king his heirs and successors shall be taken and re-  
" puted the only supreme head on earth of the church of  
" England, and shall have full power from time to time to  
" visit reform correct and amend all such errors heresies and  
" enormities whatsoever they be, which by any manner of  
" spiritual authority or jurisdiction are or lawfully may be re-  
" formed ordered corrected or amended," that is, says Warburton, " which the church as a society or political body con-  
" cerned only about spiritual things was before empowered to  
" do." Now it is evident, that although the church be a so-  
ciety, yet it is only a society for the ends of its own institu-  
tion ; it ought not therefore to be called a *political*, but a *spiritual*  
body. Both Warburton and his opponents admit the church  
to be a visible society of individuals, according to the nineteenth  
article of his religion : but his opponents are surely warranted  
in assuming from its being a purely *spiritual* society, that it  
possesses none of the rights powers or qualities, which are essen-  
tially annexed to a *political* society consisting either wholly or  
partially of the same identical individuals, who are also members  
of the *religious society*. But the same individuals cannot con-  
stitute two separate distinct and independent societies but by  
attributes



attributes qualities and predicaments, that are in their nature BOOK III.  
 separate distinct and independent of each other, though existing CHAP. III.  
 at one and the same time in the same individuals.

The rejection of Warburton's visionary alliance between church and state, tends strongly to prove the lawfulness at all times, and the duty at most of the *civil* magistrate's giving or at least continuing, when once begun, a *civil* sanction or establishment to the religion generally professed by the avowed majority of his subjects. The sole view and scope of my researches is to ascertain what rights and duties in such cases are respectively given or imposed by church or state, the knowledge of which alone can ascertain with precision the line of demarcation between the *spiritual* and *temporal* powers, and establish our practical obligations and duties as citizens and Christians.

Lawfulness  
at all times  
and duty at  
most to give  
a *civil* esta-  
blishment of  
religion.

It is astonishing to find two such men as Hooker and Warburton, both of one church and supposed to be of one principle as to religious credence and ecclesiastical polity, and both having declared their unfeigned assent and consent to and approbation of the same articles of the same religion differing so widely from each other upon the nature and source of *spiritual power and jurisdiction*. The subject of the 8th book (of Hooker's Ecclesiastical Polity) is \* 'a defence of the civil magistrate in

Disagreement  
between  
Warburton  
and Hooker.

\* Warburton's Alliance, lib. ii. p. 180, Hurd's edit.

'the



BOOK III. 'the administration of ecclesiastical supremacy against the pu-  
 CHAP. III. 'ritans of that time, who denied the spiritual legality of such a  
 'supremacy, and supported their opposition upon this capital  
 'argument.' "The church and commonwealth being societies  
 "or corporations totally distinct and independent on one another  
 "by nature, there is a separation perpetual and personal between  
 "the church and commonwealth." 'This argument Hooker  
 'attempts to overthrow. The position of his adversary is loosely  
 'worded. But the contest at that time subsisting between the  
 'puritans and the church of England shews the meaning to  
 'be this, That the independency which a religious society had  
 'by nature, it could never give up to the civil. The excellent  
 'Hooker,' continues Warburton (p. 181) 'took the contrary  
 'method: he denied the premises, instead of questioning the  
 'conclusion; and so entangled himself and his cause in inex-  
 'tricable difficulties. He too hastily conceded to his adver-  
 'saries, that those things which were separated by nature and  
 'more especially by divine institution and so independent of  
 'one another must always continue independent. An absurd  
 'assertion. Instead therefore of exposing the error of the con-  
 'clusion, Hooker addresses himself to confute the premises:  
 'and to shew, that church and state were not two societies  
 'totally distinct and independent by nature, but rather one and  
 'the same society: which regarded in different views had dif-  
 'ferent names.' "For," saith he (p. 407. Eccl. p. 723), "the  
 "truth is, that the church and commonwealth are names  
 8 "which



“ which import things really different. But these things are BOOK III.  
 “ accidents : and such accidents as may and always should dwell CHAP. III.  
 “ lovingly together in one subject,” “ which subject he tells us,  
 ‘ is the aggregate body of a people : or in other words Church  
 ‘ and State are one society under different names.’

Now it is impossible to conceive a more substantial difference upon this important subject, than between the opinions of Warburton and Hooker. Whatever consequences Hooker drew from the premises, he appears to have been forced by the overpowering glare of conviction to make this concession to his adversaries ; “ that those things, which were separated by nature  
 “ and especially by divine institution and so independent of one  
 “ another must always continue independent.” Warburton says, that he “ too hastily conceded this absurd assertion : which  
 “ the reader will see confuted at large in the postscript, against  
 “ the reasoning of Lord Bolingbroke, who lately revived this  
 “ puritan principle.” After having repeatedly and attentively and impartially read this postscript, I am forced with Hooker, not *hastily* but deliberately to concede the assertion, which to the learned Prelate appears *absurd*, but to some others palpable and evident.

Though I fully and unequivocally submit to this assertion, Mischief of  
denying true  
principles.  
 which the excellent Hooker also conceded, and which in my  
 opinion can be denied by no impartial man, yet am I far from  
 adopting



BOOK III. adopting the reasonings of Lord Bolingbroke upon it. \* I have  
 CHAP. III. often and seriously lamented the pernicious consequences of deny-  
 ing to our adversaries self-evident and incontrovertible propo-  
 sitions. And surely none was ever more emphatically of that  
 quality than the assertion, which Hooker conceded and Warbur-  
 ton called absurd. For "those things, which are separated by  
 "nature and more especially by divine institution and so inde-  
 "pendent of one another must always continue independent,"  
 as is self-evident, whilst that nature lasts, by which they are sepa-  
 rated and independent; but *ex confesso* this their nature proceeds  
 from divine institution: therefore no power short of *divine* can  
 alter the nature of things, which they received from *divine* insti-  
 tution. But that thing, which is separated and independent of  
 another *by nature* cannot cease to be so without changing its na-  
 ture: consequently the conclusion, "that things separated by  
 "nature and independent of one another must always continue  
 "independent," is not as Warburton says, an *absurd assertion*,  
 but a proposition of metaphysical and eternal truth.

Indepen-  
 dence of the  
 religious so-  
 ciety.

When Warburton had proved † that "religion had thus  
 "composed a society," he then asserts truly, "that it must needs  
 "be sovereign and independent of the civil:" and in support of  
 this leading principle he quotes Bossuet: Def. Cler. Gal. l. v.  
 c. 3.) "Regnum et sacerdotium distinctas potestates in suo

\* Vid. the sixth chap. of *Jura Anglorum* Of the effects of denying true prin-  
 ciples *per totum*.

† Alliance, l. i. c. 5, p. 53, Hurd's ed.

"quamque



“quamque ordine supremas esse omnia monumenta clamant” &c. BOOK III.

Upon this independent and sovereign quality of the two societies does he ground the possibility of “his national alliance between Church and State.” He then describes the grand effect of it according to his system, “in the State’s having acquired by “concession of the Church its supremacy in matters ecclesiastical. “The Church resigning up her independency and making the “magistrate her supreme head, without whose approbation and “allowance she can administer transact or decree nothing.” From what I have heretofore said and from what I shall hereafter say, I am under the necessity of treating these pretended concessions of the Church to the State as absolute impossibilities, from the nature of the things to be conceded, from the incapacity of the Church to alienate, and from the inability of the State to receive them. It is one of Warburton’s peculiar excellencies to superabound with the strongest refutations of his own assertions. No man could have proved more strongly than himself the absolute impossibility of the Church’s surrendering her independency to the State: “The independency of the Christian church is de-  
Rights of the  
church *jure*  
*divino*.  
 “rived from a higher authority than what the State claims for  
 “any of its rights; the Church holding of God immediately  
 “and in an extraordinary manner, the State only mediately and  
 “in a common way.” In other words of similar import, the rights of the Christian church are holden *jure divino*, the rights of particular States are holden *jure humano*. The latter therefore are as essentially in their nature changeable transferable and re-



BOOK III. vocable, as the former are immutable inalienable and perpetual.

CHAP. III. But in order to shew more satisfactorily the difference between a *civil* sanction or establishment given by a State to any particular religion, and that sort of alliance or *foederacy*, which Warburton would establish, I must proceed in my investigation of the subject in hand.

Changes in  
the national  
religion pro-  
duce no  
change in the  
civil magi-  
strate.

In the earnest pursuit of truth I feel it to be my peculiar duty to adduce such proofs in support of my reasoning, as can be reasonably objectionable to no part of my readers. It must be allowed by all, that the change of the national religion could not operate any change in the nature force and efficacy of the *temporal* or *civil* legislative power of this nation. Whatever acts the civil legislature could do before the reformation, such and such alone could it lawfully and validly do since: for the renunciation of the *spiritual* supremacy of the see of Rome or any other act establishing the reformed religion could neither enlarge nor extend nor in any manner alter the nature and powers of the *civil* magistrate.

It is but justice to allow to every man a certain degree of warmth in maintaining the convictions of his own mind: it generally bespeaks a sincere heart: sometimes it masks falsehood: at others it supplies the want of argument\*. If Bishop War-

\* Warburton's biographer says (p. 121) "The difference between him and  
" ordinary writers, who seem to be at their ease in disputing, whether on reli-  
" gion or any other subject, is merely this. *He* felt strongly and wrote forc-  
" bly: *they* are incapable of doing either."



burton's disciples or admirers participate of the anticipated triumph and confidence, with which he opens his discussion upon a *Test Law*, to them, I presume, it will appear weakness to question and madness to deny his reasoning upon it. \* "O magna vis veritatis, quæ contra hominum ingenia, calliditatem solertiam contraque fictas omnium insidias facile per se, ipsa defendat! (Cic. Orat. pro Cæl.) Thus breaks out the illustrious Roman transported by a fit of philosophical enthusiasm. This force of truth never shone with greater lustre than on the present occasion: where by the assistance of a few plain and simple principles taken from the nature of man and the ends of a political society, we have cleared up a chaos of controversy: proved the justice and necessity of an alliance between Church and State: deduced the mutual conditions upon which it was formed, and shewn them to have an amazing agreement with our own happy establishment. What remains is to vindicate the equity of what our constitution † calls a *Test Law*: which we are now enabled to do in the very principles of our adversaries themselves." Let us but summarily view the principles facts and deductions of this visionary projector, and perhaps we shall find him but little entitled to adopt on this occasion the self-confident enthusiasm of Tully "O magna vis veritatis!"

He tells us (p. 208) that "he has from a continued chain of

\* L. iii. c. i.

† The inventions of a party in the reign of Charles II. can make no part of the English constitution.



BOOK III.

CHAP. III.

Incoherency  
of Warbur-  
ton's system.

“ reasoning deduced his main conclusions, *the necessity of an estab-  
lished Church and the justice and equity of a Test Law*” Let it.  
also be ever remembered that \* he raises and turns his whole  
theory upon these two hinges *namely that the State has only  
the care of bodies and the Church only the care of souls †: and that  
each society is sovereign and independent of the other.* This inde-  
pendency of the two societies is the fundamental condition and  
basis of Warburton's wild monster of Alliance: and vainly in-  
deed will any man seek an alliance between two societies or two  
States, which are not independent of each other. The inde-  
pendence is as requisite for the continuance of the alliance, as it  
was necessary for its first formation, as is self-evident. And  
yet he gravely assures us, that ‡ “ the right the church departed  
“ from was her independency, which she transferred to the civil  
“ sovereign; for no alliance can be made between two such inde-  
“ pendent societies, till one hath given up its independency to  
“ the other.” But is it not evident, that the surrender of the in-  
dependency of either society to the other destroys the very  
nature of an alliance and converts it into an union or incor-  
poration? Warburton however to prove himself still consistent  
in contradiction (for I find him consistent in nothing else) tells

Indepen-  
dence neces-  
sary for the  
continuance  
of the alliance  
as well as for  
the forma-  
tion.

\* All. l. iii. c. 3. p. 230. Hurd's Ed.

† How then can the Church make over to the State any of her powers which  
only affect the soul; and how can the State possess or exercise any powers over  
the soul having only the care of bodies?

‡ L. iii. c. 3. p. 208.



us elsewhere, \* “ that the administration of each society is exercised in so remote spheres, that they can never meet to clash : “ and those societies, which never clash, necessity of State cannot “ bring into dependency on one another.” But when one society (viz. the Church) *has given up its independency to the other*, it will require something more than the dogmatic sufficiency of Warburton to prove, that the Church is not *thereby brought into dependency upon the State*. He asserts the actual surrender, and maintains, that notwithstanding the two societies still remain independent. Curious truly are the arguments, with which this inventive theorist supports his thesis. The actual surrender of the rights of Christ’s church, which according to himself, “ she “ holds of God immediately and in an extraordinary manner,” he determines by “ the law of nations. This by the law of nations “ (says he) shall be the less powerful society ; which in the present case is the Church.” The comparison of *more* or *less* power can only be instituted between homogeneous powers : not between such, as are as essentially different from each other as spirit from matter, heaven from earth, God from man.

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CHAP. III.

Little will such incongruity of argument justify his pompous boast of clearing up a *chaos of controversy* : still less will it operate upon the excluded recusants a conviction of the propriety justice or necessity of a *test law*. Rightly and necessarily is a test established to exclude those from all participation in government,

True grounds  
of a test law.

\* L. i. c. 5.



BOOK III.  
CHAP. III.

who hold *opinions pernicious to civil society* or destructive of the constitution of their country. And I cordially agree with the learned Prelate \*, “ that the English papist, who owns a foreign “ ecclesiastical power superior to all temporal government, should “ not be tolerated in any sovereign state;” if by the word *superior* he mean, what is generally understood by it, viz. a controlling power of command in *temporal* government. He might upon the same principle have added, that the protestant, who holds that the *power of the keys* is independent of the *civil* magistrate, should be exterminated from every State. But the calm and unbiaſſed reasoner will view with equal indifference the *power of the keys*, whether vested in a Gregory an Austin an Anselm a Becket or a Tillotson: he will ever see the *civil* power of the Parliament and King independent of the *power of the keys*, and in their political capacity so far superior to it, as to be out of the reach of its effects. The King and every individual member of a Parliament may be censured and excommunicated, which is the last rigor of the *spiritual* power, and yet their royal and parliamentary rights powers and prerogatives will not in any manner be affected by these spiritual punishments. He will consequently perceive it to be immaterial, whether a sentence, that affects not the government privilege prerogative rights and powers of the English constitution be pronounced from this or the other side of the Alps.

Power of the  
keys independent  
of civil  
governments.

When we have once acquired a distinct view of the naked

\* Alliance p. 214. Hurd's edit.

truth,



truth, of slight consequence is it, whether she had before been concealed from our sight by the imposing authority of erudition or the beguiling arts of sophistry. Warburton having fairly distinguished *restraint* from *punishment*, annexing the former to *mischiefs* and the latter to *crimes*, \* assures us, that he has “proved incontestably, that the test law operates only a restraint and not a punishment. The utmost therefore, that can be inflicted for a mischief is restraint: that is, just so much pain, when the mischief proceeds from a rational agent, as is necessary to repel that mischief.” This is a true proposition and a fair criterion for determining according to his own avowals *the justice and equity of the test law*. We must consider impartially what conclusions flow from the premises. † “To make this evident,” says he, “let us suppose a person able in one certain place only to do mischief: and that he is disposed to do it: it is plain, that there are no other means of repelling this evil, than by debarring his entrance into that place. These means then are necessary: but what is necessary to repel an evil is restraint only. But were this pain extended: and because the person can do mischief in one place, he is debarred entrance into ten, then the pain becomes a punishment, because more than necessary for repelling the evil. This is exactly the case in hand. Diversity of sects can do mischief only by getting into the administration: therefore to keep them out, is

Restraint and  
punishment.

\* P. 213. Hurd's ed.

† P. 214.

“ for



BOOK III. "for the reasons above, only a restraint. But were their civil in-  
 CHAP. III. "capacity extended further, then it would become a punish-  
 "ment. By the test law, it is not extended further. Therefore  
 "it is no punishment, but a restraint only." His Lordship then  
 complains, "that the force of this reasoning has not been duly  
 "considered."

Warburton  
 argues from  
 false data.

Establish-  
 ment not  
 founded on  
 truth, but  
 conviction.

The reasoning is singular and the complaint still more so. *Diversity of sect can do mischief only by getting into administration:* therefore he allows so much *civil* incapacity, as shall keep them out: and he affirms our *test law* to extend no further. Now what are the facts, upon which this reasoning turns? They were the same when Warburton thus reasoned, as they now are whilst I am considering the force of his reasoning. He understands by a test law "some sufficient proof or evidence required  
 "from those admitted into the administration of public affairs,  
 "that they are members of the religion established by law." By *administration of public affairs* it is evident, that he means a participation of the *legislative* capacity from what he says in the same page, which can only apply exclusively to parliament, "The two societies being composed of the same individuals, the greatly prevailing religion must have a majority  
 "of its members in the assemblies of State, who will naturally  
 "prefer their own religion to any other." It is perfectly true that the *civil* establishment of a religion is founded not upon its  
 truth



truth or rectitude, but only upon the adoption of it by the majority of the community: therefore says Warburton, p. 204,

“The alliance subsists just so long, as the church thereby established maintains its superiority of extent: which when it loses to any considerable degree, the alliance becomes void, and of course then ceases the *test law*.”

The *test law* of Car. II. upon which he reasons *does not exclude any man from the administration of public affairs* in this country as he understands public affairs, since the receipt of the sacrament is not required for admission to Parliament, which is the only *assembly of state*, in which the numbers of voters can affect the law: he therefore argues *de subiecto non supponente*. If the established church and its *unavoidable consequence* (where there is a diversity of religions) a *test law* can only subsist just so long, as the church maintains a superiority of extent; a majority of members in the assemblies of state is immaterial and irrelevant to the argument: for the actual number of believers in the established church, not of voters in the senate will cause the *superiority of extent*, which regulates the continuance or cessation of the alliance. At all events the fact of their admission to parliament falsifies the assumption of their exclusion: *to keep them out is only a restraint*.

Sacramental  
test excludes  
not from Par-  
liament.

The very thing, which this inventive speculator asserts the



## BOOK III.

## CHAP. III.

The test law  
more than a  
restraint.

*test law* only operates, viz. the exclusion from the *administration of public affairs*, it notoriously does not operate: and the further *civil* incapacities beyond such falsely-assumed exclusion, which he denies the *test law* to extend to, the test law does notoriously induce upon all recusants: for it incapacitates under the severest pains penalties and disabilities every recusant to serve his country either by sea or land even as a private sailor or a common soldier, or to be a member of a corporation of a country town. He pretends not that to become a private sailor or a common soldier, or even an alderman of a country borough was an admission *into the administration of public affairs, or into the assemblies of state, or getting into administration.* The statutes of the realm roundly falsify his assertions. The *test law* does more than *keep men out from getting into administration*: it extends *their civil incapacities further*: it incapacitates them from serving their country and defending themselves and families from a common enemy.

The *test law*  
a punishment.

Warburton's  
premises and  
conclusions  
false.

We have now in part complied with Warburton's own desire, and duly considered the force of his *reasoning*, and what is the consequence? A glare of conviction that his *major* and *minor* propositions are both false: the first, which assumes that recusants are actually excluded from the assemblies of the state is false, as they are admissible to parliament; and the second, which asserts that they incur no further disabilities or *civil* incapacities than such exclusion is also false, as they are incapacitated to serve their



their country by land or sea, or to be members of a corporation. BOOK III.  
 From false premisses no other than *false* conclusions can be CHAP. III.  
 drawn.

If false *data*, unfair applications, manifest contradictions, and unjust inferences constitute the perfection of a moral and political theory, I must humbly confess my inability to comprehend the system of this *scientific Reasoner upon political subjects*: and I must content myself from the lowly valley to cast up with astonishment and amaze my incredulous eyes to behold the gigantic stride of this incomparable Divine from *Olympus to the ends of the earth*\*.

Warburton's  
system incom-  
prehensible.

I am ignorant of the effects of this *fæderative talisman* upon the minds of my countrymen since its publication. The Right Rev. Biographer assures us, p. 16. "That no sort of men either  
 "within or without the church was prepared at that time, for  
 "an indifferent reception of this new theory, which respected  
 "none of their prejudices. It was neither calculated to please  
 "the high church divines, nor the low: and the laity had taken  
 "their side with the one or the other of those parties." His  
 Lordship of Worcester (with humble submission I say it) might have added with truth, that his friend's theory was neither cal-

Satisfies nei-  
ther high nor  
low church,  
believer nor  
infidel.

\* Hurd's Life, p. 19.



BOOK III.

CHAP. III.

culated to satisfy the *believer* or the *non-believer* in Christianity: not the *believer*, because he believes that the powers, which Christ left to his church cannot be aliened by those, upon whom they have devolved, nor be exercised by those, who are not spiritually qualified for that purpose. Not the *unbeliever*, because he does not believe, that Christ gave or transmitted any *spiritual* powers to human beings, consequently that none can have been transferred or surrendered by them to the State, as is self-evident. If to use a Warburtonian phrase, which he has applied to very respectable men (Penn and Barclay), any future scholiast or commentator shall attempt to *lick this abortion into shape* \*, he will wear out a tongue of steel or adamant, ere he reduce the mishapen monster even to a faint semblance of simplicity or truth.

\* Alliance, l. i. c. 5.



## C H A P. IV.

OF THE PAPAL POWER AND THE CIVIL ESTABLISHMENT OF  
THE ROMAN CATHOLIC RELIGION IN ENGLAND BEFORE  
THE REFORMATION.

*Meaning of the Term Church of England. Rights and Liberties  
of the Church of England mentioned in Magna Charta. Dispute  
between Coke and Parsons upon Spiritual Authority. Suppres-  
sion of Knights Templars. Caudrey's Case. Pope partly Head of  
the Civil Establishment of Religion. King wholly so since the  
Reformation. English Clergy exempt from Lay Tribunals. Sta-  
tute of Mortmain. Parliament disposes of the Trees in Church-  
yards: and directs the Appropriation of the Revenues of Religi-  
ous Houses. Excommunication. Statute of Provisors. Confir-  
mation by the Pope required by the Common Law. Coke's Con-  
clusions unjustifiable. What was done concerning Religion under  
Hen. IV. Hen. V. Hen. VI. Edw. IV. Ric. III. Hen. VIII.*

IN order to explain more clearly and fully the nature and effects  
of the *spiritual* or ecclesiastical courts, and of the supremacy of  
the king, which are the two remaining points of the civil esta-  
blishment of the Protestant episcopalian religion, that it is my  
duty to discuss, it will be previously necessary to enquire into the  
laws

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Discussion  
preparatory  
to the enqui-  
ry into *spiri-  
tual* courts  
and the supre-  
macy.



BOOK III. laws of this country concerning the Pope and the civil establish-  
 CHAP. IV. ment of the Roman Catholic religion before the reformation;  
 especially as several of them are still in force; and there are  
 throughout the British empire some millions of his majesty's  
 subjects, who still profess that same religion. Such statutes as  
 were passed by our ancestors before the reformation upon these  
 subjects had neither more nor less force than other acts of parlia-  
 ment passed upon the same subjects since the reformation: they  
 are not however open to the objections, which my Clerical Cor-  
 respondent urges against the right and power of the legislature to  
 give civil sanction to the Protestant religion; asserting (p. 100)  
 "Nor can any part of such establishment of its own nature *ex*  
 "*vi sua* be binding on the consciences of men." All the acts  
 of parliament passed before the reformation were allowed by the  
 nation, which was then Roman Catholic, to be acts of the pro-  
 per competency of the *civil or temporal* power of the State, and  
 possessed therefore all the force efficacy and obligation, which  
 can attend the acts of any supreme *civil or temporal* power  
 upon earth. As therefore these acts were uniformly submitted to  
 by our Roman Catholic ancestors, whilst they continued in com-  
 munion with the See of Rome, it will not certainly be thought  
 singular, that a person of that same communion should think and  
 speak of them as his ancestors did of old.

Same obliga-  
 tion of sta-  
 tutes before  
 as since the  
 reformation.

We can refer to no authentic monuments of antiquity, which  
 distinguish



distinguish so exactly and so forcibly the true line of demarcation between the *spiritual* and *temporal* power, as the acts of the English parliament passed in the 13th and 14th century upon the rights and franchises of the church of England. The term *Church of England* did not then mean, what it now does, an independent and distinct society of individuals differing in doctrine and terms of communion from other Christian churches; but merely that part of the Catholic Church, which was composed of Englishmen, admitting a *spiritual* supremacy both of dignity and jurisdiction in the Pope of Rome as the universal bishop and spiritual supreme head and governor of the Church of Christ, and holding in common with most other churches of the then Christian world communion with the See of Rome, as the centre of unity of the Catholic Church.

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What formerly meant by the church of England.

Under this impression and conviction our Roman Catholic ancestors distinguished clearly between the real *spiritual* power of the Pope, as supreme head of the Church of Christ, as they allowed him to be, and those rights privileges liberties and franchises, which the State gave or allowed to the English clergy as the *civil* establishment of that religion, which the nation then professed. These were so well known to the nation and so universally allowed of, that in *Magna Charta* it was found useless to specify them, as they did the other laws, which compose the body of that act: it was very properly the first article and is expressed in these short emphatic words: "That the Church of England shall be

Liberties of the church of England.



BOOK III. "free and shall have all her own rights and liberties inviolable."

CHAP. IV. These rights and liberties, which were meant and intended to be *granted* and *confirmed* by this act, were evidently supposed to consist of such things, as were of the competence or resort of the *civil* power to grant: nor could they consist of the general rights and liberties of the Church of Christ, because these would not be different in the church of England, from the rights and liberties of the churches of Spain Poland Hungary or other nations in communion with and dependent upon the See of Rome: nor could such rights be either granted or confirmed by the *temporal* power or *civil* legislature. The rights and liberties of the Church of England granted and confirmed by this act were not the rights and liberties of any other church or of any other than the English clergy: they were therefore granted by the State, and consequently might be resumed repealed altered or annulled by the State. For it is impossible, that a legislative body should be capable of doing any act whatsoever at one time, which the same legislative body may not at another time abrogate or alter\*: for the existing generation is not bounden to observe any law merely because it was passed by their ancestors, but because by the non-repeal the existing legislature actually consents to its continuing operative.

Grants of the  
State.

\* So says Rousseau, "It is against the nature of the body politic for the sovereign power to impose any one law, which it cannot alter." Cont. Soc. l. i. c. vii.

Whatever



Whatever was an object of legislation to our ancestors, must essentially be so to their posterity. Every law is but a formal expression of the will of the majority: a majority then at any time expressing a contrary will necessarily defeats the first law. Such is the essential nature of human laws and such are the grounds of the axiom, *that the same power, which enacts may abrogate*. Upon the nature and effects of these different statutes Sir Edward Coke, in his report of Caudrey's case entered very fully into the discussion of what he calls "the king's ecclesiastical law." (5 Rep.) The publication of this report, or rather argument in support of the king's spiritual *supremacy* over the church of England, brought forth the answer of Father Parsons the jesuit. Both these dissertations contain much learning and close argument: and as they so intimately affect the subject of this treatise, I shall give them more than a passing consideration.

BOOK III.

CHAP. IV.

The binding power may repeal and abrogate.

Controversy between Coke and Parsons.

Sir Edward Coke notwithstanding his usual minuteness method and precision appears through this whole report to be unaccountably inattentive to the origin nature and effects of the real *spiritual jurisdiction*, by which the church of Christ is and must ever according to the Divine promise continue to be governed: he confounds it with what he calls the *jus regis ecclesiasticum*. In discussing a matter, which required some knowledge of practical theology and a large portion of impartiality and candour, we must not wonder that this great lawyer should have fallen short of his usual accuracy and success in argument. There needs surely no other proof of this than his extrava-

Coke's inaccuracy and extravagancy upon this subject.



BOOK III. gant attempt to derive the *spiritual* jurisdiction, by which the  
 CHAP. IV. church of Christ is governed, from the ceremony of anointing  
 the sovereign at the coronation. *Reges sacro oleo uncti sunt  
 spiritualis jurisdictionis capaces.*

Parsons not  
 inattentive to  
 the real ques-  
 tion though  
 ignorant of  
 many others.

Father Parsons on the other hand, though he lost not sight  
 of the real question, which was, whether any particle of that  
*spiritual power*, which Christ gave to his Apostles, and which by  
 succession now exists in the governors of his church, were vested  
 in the sovereign by right of his crown, yet has he betrayed more  
 ignorance of the common canon and statute laws of this realm,  
 than a person of his learning could have been suspected of.  
 He most unwarrantably extends the *spiritual* power of the church  
 further than its nature will admit of.

Who was the  
 head of the  
 civil establish-  
 ment of the  
 Roman Ca-  
 tholic reli-  
 gion in Eng-  
 land.

I have before expressed my surprise, that so many persons of  
 great legal and theological knowledge should have misconceived  
 the nature of the king's supremacy, as it exists at this hour by  
 virtue of the different statutes upon that subject. Although I  
 shall speak more fully upon it in the sequel, yet I cannot refrain  
 from declaring my decided opinion upon it at present: that  
 before the reformation by the laws of this land (or concession  
 of this community) the Pope of Rome was in some respects  
 head of the *civil* establishment of religion in this kingdom; in  
 all other respects the king was the supreme executive magistrate  
 or head of that *civil* establishment. Since the reformation, the King  
 has been the only and exclusive supreme executive magistrate

or



or head of the *civil* establishment of religion in England. Every one of the precedents and arguments adduced by Coke in his report of Caudrey's case goes to prove, what his antagonists will never deny, viz. that whatever *civil* establishment or sanction the Roman Catholic religion enjoyed in England depended upon the *civil* legislature, by which the rights liberties franchises and privileges were granted to the church, or more properly speaking to the clergy of England. So whether the headship or supremacy of this *civil* establishment were by the will of the nation committed in some instances to the Pope or in others to the King, the continuance of such headship or supremacy necessarily depended upon the continuance of that will of the nation.

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The general and according to the principles of the Roman Catholic religion *necessary spiritual* jurisdiction of the bishop of Rome is particularly distinguished by Father Parsons himself from that other authority, which he had some time exercised over the *civil* establishment of religion in this kingdom; and which latter power it was not thought repugnant to the Roman Catholic religion in those days to resist. It was fully competent for the nation, if they chose it, to allow such rights to the Pope: and whilst that will of the nation lasted, he had a just, but only *human* title unto them. From the moment, that the nation chose to allow them no longer, the papal claim unto them became properly speaking an encroachment upon the regality of the crown and civil rights of the nation.

Difference  
between the  
pope's power  
over the  
*church* and  
the tempo-  
ralities of  
clergymen.



## BOOK III.

## CHAP. IV.

It is unfortunate for the Christian church, that a *divine* claim had ever been set up to rights, which evidently could only have been acquired by *human* title. So says Parsons\*: "The bishops of Rome had general authority over England in his (Edw. II.) daies not only in meere spiritual jurisdiction (which all the bishops of England professed to receive from him) but also in external disposing, when he would of bishopricks and other prelacies, notwithstanding all the complaints made in his father's and grandfather's times about that matter, may be made evident by many examples." The first of which examples is that of Pope Clement V. suppressing the Knights Templars and appointing their lands to the Knights Hospitalers (now called Knights of Malta). This was certainly an act of *civil* or *temporal* power, and the learned divine observes "that the decree was obeyed in England without resistance." This may indeed prove the acquiescence of the nation, not their obligation to obey it: and if this decree of the pope had been looked upon as absolutely binding and compulsory, it would have been useless for parliament to have *confirmed* it, as Father Parsons assures us after Walsingham they did. The next example is of the same pope's rejecting Thomas Cobham chosen by *congé d'élire* to the see of Canterbury, who went to Avignon according to the custom of those days to be confirmed and invested by the Pope; and his holiness appointing at his own

Suppression  
of the Tem-  
plars.

Pope con-  
firms Rey-  
nolds arch-  
bishop of  
Canterbury  
instead of  
Cobham who  
had been  
chosen by  
*congé d'élire*.

\* Answer to Coke, p. 279.



motion and discretion Thomas Reynolds to that see, to whom BOOK III.  
CHAP. IV. he sent both the investiture and pall; at which the king and queen were greatly contented. Whoever admits the collation of *spiritual* jurisdiction to be made by the bishop of Rome by confirmation &c. must necessarily admit his absolute right of appointing in the first instance, as I have before observed. But we do not find the parliament *confirming* the appointment of archbishop Reynolds. Had he been appointed by the king, the confirmation must have been made from Rome. For *confirmation* imports the supremacy or transcendancy of that very power, by virtue of which the original act is done.

The whole of Caudrey's case, which was an action of trespass Caudrey's  
case. for breaking his close, he having been deprived of his living by a sentence of certain ecclesiastical commissioners appointed under the 1st Eliz. c. 1, emphatically concerned the *civil* establishment of religion, which was the possession of land in England, which could be neither regulated nor affected otherwise than by the laws of England. Had indeed the *civil* power proceeded against Caudrey for administering the sacraments or preaching to his parishioners the word of God, he retaining the jurisdiction, which he had received from his lawful bishop by institution, then indeed would the *civil* power have exceeded their limits and encroached upon the spiritual government of the church, which must by its nature within the range of its proper objects be for ever independent upon the state. No power upon earth, but



BOOK III.  
CHAP. IV.  
*Spiritual jurisdiction revocable only by the collator.*

but that which gave it, could deprive him of the *spiritual* jurisdiction, which he received from his bishop, whose attorney or delegate he was: for though by the laws of the state after *institution* he acquired a freehold or life estate in the land glebe or tythes belonging to his parsonage, yet his *spiritual* faculties, mission or jurisdiction, by virtue of which he was authorised to minister the Gospel to his parishioners and they bounden to obey him, could only be revoked suspended or annulled exclusively by the bishop, who gave them.

I have not been able to trace any period of our history, during which the ideas of the nation or legislature were fully clear and precise upon the nature and extent of real *spiritual* power, which is properly called by divines the *power of the keys*; for this and this alone can be possessed by the church of Christ.

Difference between the church of Christ and national bodies of clergy.

It is a general error of most writers upon church or ecclesiastical matters to speak indiscriminately of all rights franchises or privileges, which their national clergy possess as of the rights franchises or privileges of the church: and as most Christians are in the habit of believing the church of Christ to have been established on earth by *divine institution*, so they easily lapse into the error of looking upon whatever their national clergy (often called the church) possesses, as holden in consequence of this *divine institution*. No man's ideas upon this subject can be clear precise and just, who does not first distinguish between the universal body of believers in Christ's revelations, which compose



one visible church of Christ upon earth, and any national congregation society or collection of such believers, who may compose a particular body of clergy, part of the whole, distinguished from other clergy of the church only by their geographical situation, civil obedience and other local and temporal rights duties or advantages. Every quality or attribute, which individuals whether clerical or lay receive from the *power of the keys* is common to all such members of the church respectively and unexceptionably throughout the whole church or visible society of believers; nor can any such qualities or attributes be in any manner affected by the *civil* power of any state whatsoever. Hence follows a necessary corollary, that whatever rights or privileges are enjoyed by any particular set or number or collection of Christians whether clerical or lay, which are not universally and unexceptionably enjoyed by the whole church of Christ, cannot proceed from the *power of the keys*, but must essentially flow from and depend upon the *civil* power of that state, to which such privileged set number or collection of Christians are subject. I speak not here of *spiritual* discipline, which the church may impose partially, and change and repeal as circumstances shall require. This *spiritual* discipline cannot lawfully be prevented to be observed by any state: unless perhaps from peculiar and urgent circumstances the public observance of it would in moral probability produce danger disorder and mischief in the state.

BOOK III.

CHAP. IV.

No right can proceed from the spiritual power which is not common to every clergyman throughout the universe.

*Spiritual discipline.*

In



## BOOK III.

## CHAP. IV.

3 Ed. I. Par-  
liament re-  
forms abuses  
in the clergy  
(or church).

In the year 1275 (3d Ed. I.) the Parliament complaining, that the state both of the realm and of holy church had been ill kept, *pur ce que lestat de son royaume et de seynthe eglise ad este malmenez*, they confirmed and settled the points, in which the nation complained abuses had existed. The first complaint was of the abuse of the hospitality of religious houses, by which they were so impoverished, that they could neither maintain their own religious nor give the charities, for which they were instituted: this was remedied by the act. The next abuse complained of was that clergymen, who by the privileges of the church of England were exempted from trial and punishment by the lay courts, were not delivered over to their ordinaries: the act therefore confirmed the privilege and enacted, that “they, which be indicted of such offences by solemn inquest of lawful men in the king’s court in no manner shall be delivered without due purgation, so that the king shall not need to provide any other remedy therein.” Hence it clearly appears, that the privilege, which the English clergy enjoyed of not being tried and punished by the lay courts was originally granted to them by the state: it also appears, that in these Roman Catholic times, clergymen were indictable for offences in the king’s courts; and although their punishments were referred to the ordinary, yet were they so referred by the *civil* power, which also provided in case due purgation were not made, that the *civil* executive power should provide a further remedy; which it certainly could not do, if the delinquent by virtue of his

State grants  
immunities  
to the clergy.



his order or otherwise were not subject or liable to the *civil* power or jurisdiction of the state.

BOOK III.  
CHAP. IV.

Four years after the passing of this act, (7 Ed. I.) the English parliament gave the most unequivocal proof of their possessing the supreme dominion of all the property of the kingdom, in passing the statute of Mortmain; which act prohibits the appropriation of lands to the church. But if the church can possess lands *jure divino* or by any title paramount to or independent of the *civil* power, then could not the *civil* power by any act whatsoever prevent or hinder the church from taking them: and although it might be questioned whether the power of hindering a specific appropriation of property imported the *altum dominium* of it in the prohibiting power, yet when that power goes to the length of forfeiting the property to its own use for the very attempt of appropriating it, (even to God or the church), there can be no room for doubting, whether the supreme dominion over the property vest in the supreme *civil* power of the state: nor in fact can this *altum* and *supremum dominium* rest any where else: it is not in its nature transferable or extinguishable, and is incompatible with the like claim or title of any subordinate individual or corporation.

In 35 Ed. I. (A. D. 1307) the parliament in directing by whom and on what occasions trees might be felled in churchyards, gravely and solemnly declared, that "trees which be growing

25 Ed. I.  
Parliament  
exercises  
power over  
church pro-  
perty.



BOOK III.

CHAP. IV.

“growing in church-yards are to be reckoned amongst the goods  
 “of the church, the which laymen have no authority to dispose,  
 “but as the holy scripture doth testify, the charge of them is  
 “committed *only* to priests to be disposed of.” And yet this  
 same legislature consisting of *laymen* (whatever clergymen were  
 there acted in a lay capacity) after this declaration make this  
 singular law and for this singular reason, “yet seeing those trees  
 “be often planted to defend the force of the wind from hurting  
 “of the church, we do prohibit the parsons of the church, that  
 “they do presume to fell them unadvisedly, but when the  
 “chancel of the church doth want necessary reparations” &c.  
 Now what effect the use of the trees in defending the church  
 from the winds could have in authorising laymen to dispose of  
 church goods, which they declare can only be disposed of by  
 priests, I cannot discover. However the operative part of the  
 statute, which being still unrepealed is as binding upon the  
 nation at this hour, as if it had been passed in the last session  
 of parliament, is what must direct our judgment and conduct  
 upon the question: and by the operation of this act of par-  
 liament, which has operated for 483 years upon the English  
 nation we are bounden to conclude, that the *civil* legislative  
 power did on this occasion exercise their supreme control and  
 dominion over church property: for to prohibit the incum-  
 bent for the time being to enjoy profit or dispose of these trees  
 and to direct and enjoin their particular and exclusive appro-  
 priation, is evidently to dispose of them to all intents and pur-  
 poses.



poses. And thus on all occasions may laymen or the supreme *civil* BOOK III.  
power lawfully act, because in them alone such supreme control CHAP. IV.  
and dominion over the temporalities of the church exist.

Thus in the same year the English Parliament in regulating the application of the revenues of religious houses exercised the full and supreme control and dominion over them: first by enjoining that no part of them should be diverted from the laudable purposes, for which the royal and other founders had intended, and been enabled by the state to destine them: and then by specially prohibiting the application of any part of them to any foreign purposes or to the order of any alien superior: though the act, which so expressly forbids such spiritual superiors of the different religious orders to export or appropriate any part of the temporalities of their religious subjects, as expressly and unequivocally admits and acknowledges of their spiritual jurisdiction, by which they are constituted the *spiritual* superiors, and by which their *spiritual* subjects owe them an obedience and submission not liable to nor dependent upon the civil power. “Moreover our fore-  
“said lord the king doth inhibit all and singular abbots priors  
“masters and governors of religious houses and places being  
“aliens, to whose authority subjection and obedience the houses  
“of the same orders in his kingdom and dominion be subject,  
“that they do not at any time hereafter impose, or by any means  
“assess any tallages payments charges or other burdens what-  
“soever upon the monasteries priories or other religious houses  
“in.

State exer-  
cises supreme  
dominion  
over property  
of religious  
houses.

Acknow-  
ledgment of  
foreign *spiri-  
tual* jurisdic-  
tion.



BOOK III. "in subjection unto them, (as is aforesaid) and that upon pain  
 CHAP. IV. "of all that they have or may forfeit." Can any thing more  
 clearly demonstrate, that in the judgment of our Roman Catholic  
 ancestors, the *spiritual power* or *jurisdiction* gave no right nor do-  
 minion over the temporal possessions of their *spiritual* subjects?  
 And therefore the same legislators explicitly declared, that though  
 they denied all right power or authority in these alien superiors  
 over the temporalities of their *spiritual subjects* in England, "it is  
 "not the meaning of our lord the king to exclude the abbots priors  
 "and other religious aliens by the ordinances and statutes afore-  
 "said from executing their office of visitation in his kingdom <sup>the</sup> and  
 "dominion; but they may visit at their pleasure <sup>to</sup> themselves  
 "or others the monasteries and other <sup>not</sup> in his kingdom and  
 "dominion in subjection to them, according to the duty of their  
 "office in those things only, that belong to regular observation  
 "and the discipline of their order." A notable instance this of  
 our ancestors' submission to the *spiritual* jurisdiction of the see of  
 Rome, (from which these alien superiors derived their power)  
 and their proper resistance to any claims pretensions or assump-  
 tions of *temporal* or *civil* power, within the realm of England in  
 consequence of it: and an irrefragable argument, that the pro-  
 fession of the Roman Catholic religion is neither incompatible  
 with nor repugnant to the rights power and dignity of our so-  
 vereign.

Excommuni-  
 cation.

Of few things have such erroneous ideas been conceived as of

excom-



*excommunication.* In my *Jura Anglorum* I have spoken of excommunication as being in its original nature merely and purely *spiritual*; and as such may it only be imposed or enjoined by a real *governor* of the church of Christ: nor can the state in any manner interfere to prevent or soften its effect or to check regulate or control the exercise of the power in those, who possess it. Dr. Priestley sets forth\* the true and just idea of spiritual excommunication. “All that our Saviour directs in the case of the “greatest refractoriness is to consider such obstinate offenders as “heathen men and publicans: that is, we are justified in ceasing “to look upon them as brethren and fellow Christians, and they “are not entitled to our peculiar affection and attention as such. “The delivering over to Satan, which St. Paul mentions as a punishment for the greatest offence, that could be committed in the “Christian church, is not a delivering over to the civil magistrate “or to the executioner. In short all that the New Testament “authorises a Christian church or its officers to do, is to exclude “from the society those persons, whom they deem unworthy of “it.” But there has at all times been known and still is known at this day in this country a sentence of excommunication, which produces many civil effects upon the party excommunicated: and in as much as it is productive of such effect, does it proceed from the *civil* power. And upon this distinction was grounded the 7th article of 9 Ed. II. commonly called *Articuli Cleri*. A complaint was made, that when bishops had excommunicated persons

Just ideas of  
Dr. Priestley  
concerning  
excommuni-  
cation.

Excommuni-  
cation which  
produces a  
civil effect.

\* As quoted in Jur. Ang. 242.



BOOK III. of their own dioceses, the king issued his letters to the ordinaries  
 CHAP. IV. to absolve the excommunicated parties by a certain day, or else to appear in the king's court, and shew cause, why they had excommunicated them. This complaint was either just or unjust according to the nature of the excommunication. In as much as it was attended with any civil effect, it was just, that the bishop should be accountable for his sentence to the *civil* court: in as much as the excommunication produced no *civil* effect, but was a mere exclusion from the *spiritual* communion of the faithful, a negation of the sacraments, &c. it was unjust, that the *civil* magistrate should call the bishop to any account for the exercise of a power, which he held by divine institution and independently of any human or temporal title. The answer therefore of the parliament to the complaint was, "that hereafter no such letters should be suffered to go forth, but in case, where it is found that the king's liberty is prejudiced by the excommunication."

The substantial difference between the civil establishment of religion and the real *spiritual* power and jurisdiction of the church of Christ was in some manner kept up through all the statutes and legal decisions of these times. Many writers have however attributed all the ecclesiastical immunities and privileges to a divine right or at least to a grant from the Pope, which they held to be paramount to the civil or any human claim or title whatever. The 15th article of the *Articuli Cleri* expresses the true and real ground, upon which these liberties of the church of England were enjoyed.

Ecclesiastical  
 liberties by  
 common law.



enjoyed. *Gaudebit ecclesiasticâ libertate juxta laudabilem consuetudinem regni hætenus usitatam* : that is by the common law of the land : BOOK III.  
CHAP. IV.

but the statute law may alter the common law : therefore must these liberties be liable to the control of the legislature, which they would not be, if they were holden *jure divino* by divine institution. Upon this same ground or principle by the 14th Edw. III. (A. D. 1340) spiritual persons' goods were not to be taken in purveyance without the owners' consent : and their temporalities were not to be seized " without good cause according to the law of the land and judgment thereupon given."

The grand assertion of the national rights over the civil establishment of the Roman Catholic religion was the 25th of Edw. III. commonly called the law of *Provision* and *Præmunire*, which put all purchasers of provisions from Rome for abbies and priories out of the King's protection. Of this law Polydore Virgil speaks thus : (lib. 19.) " King Edward the first of all other kings, by the sentence of his council (i. e. of his parliament, then generally called the Great Council) did decree most horrible punishment unto those, that for the time to come, should in any part of the world obtain English benefices from the pope of Rome or should carry any causes unto him but only by appeal." Father Parsons attributes the passing of this act to the influence of Edward's son John of Gaunt, " who was a disorderly man in those days and much cried out upon by all the commonwealth : the king being then grown old and feeble as well in judgment as in  
" body,"

Statute of  
Provisions,  
25 Edw. III.



BOOK III. "body," &c. (p. 292.) I doubt whether this reverend divine  
 CHAP. IV. be perfectly correct in this statement: it does not tally with other  
 historians: and about twenty-five years after this time Edward  
 III. viz. in the fiftieth year of his reign consented to an act of  
 prohibition to arrest priests actually officiating at divine service;  
 which though it be in support of the privileges of the church and  
 seems to clear this prince from any imputation of crushing the  
 clergy, still it proves to demonstration, that priests were at other  
 times liable to civil arrests, and therefore were not out of the  
 control of the *civil* power. But if this act contained in it any  
 thing inconsistent with the purity of the Catholic faith or dogm,  
 it would not have been so frequently confirmed and referred to  
 by other acts and continued in force near two hundred years till  
 the Reformation, whilst the Roman Catholic religion continued  
 to be professed and practised by the English nation.

Priests never  
 out of the  
 control of the  
 civil power.

Statute of  
 Provisions  
 distinguishes  
 clearly be-  
 tween *spiri-*  
*tual* and *civil*  
 rights.

It would be difficult more distinctly to trace and mark in what  
 the *civil* establishment of the church of England then consisted,  
 and upon what grounds it rested and ought to be supported.  
 The act does not even obliquely question or call in doubt the  
 right of the bishop of Rome to confer *spiritual* jurisdiction by  
 confirmation investiture or institution; but it only touches the  
 right of nomination election or presentation and induction, which  
 are *civil* rights, as I have before observed, and appendant to the *civil*  
*establishment* of religion, and therefore necessarily under the direction  
 and control of the *civil* power. So says Father Parsons, (p. 295)

"This



“ This proveth no spiritual jurisdiction at all in any presenter ;  
 “ but only power of presentation, which may be in any man, that  
 “ hath the *jus patronatus*.” Parsons therefore was fully warranted  
 in contradicting the conclusion, which Sir Edward Coke drew from  
 this act, to establish the king’s right to present to lapsed livings,  
 viz. that “ then the common law giveth to the king, as to the  
 “ supreme within his own kingdom and not to the bishop of  
 “ Rome power to provide a competent pastor to the church.”  
 To justify this deduction the right (upon failure of the patron,  
 ordinary or metropolitan to present within the times prescribed)  
 should have been established in the crown to appoint and provide  
 the church with a competent pastor: that is to give that *spiritual*  
 jurisdiction to him, which his parishioners should be obliged to  
 acknowledge and obey: whereas the king in the last instance  
 was by the act enabled to do no more, than the lay patron in the  
 first, which was to present or nominate a clerk to be afterwards  
 approved of and instituted or confirmed by the spiritual or eccle-  
 siastical superior. So Parsons says rightly, (p. 295) “ The prince  
 “ in this case cannot put in a pastor immediately from himself  
 “ giving him spiritual jurisdiction over souls: but must present  
 “ him to the bishop or metropolitan to be induced by him and  
 “ endued with that jurisdiction: which he should not do if his  
 “ own authority spiritual were greater than the said bishop’s or  
 “ archbishop’s.”

King never  
 can supply  
 the want of  
 confirmation  
 or institution.



## BOOK III.

## CHAP. IV.

Sir Edward  
Coke's par-  
tiality and in-  
sincerity.

By common  
law a person  
no bishop till  
he had been  
confirmed by  
the Pope.

It is surprising, that the prejudices of Sir Edward Coke should have so blinded him in a professional investigation of the common and statute law of this realm, as to make him suppress the truth and disguise the facts: for he was not treating a question *de bono*, but *de vero*: not what the law of England ought to have been, but what it actually had been from the foundation of Christianity in this realm to the days of Henry VIII. This great lawyer could not possibly have been ignorant of the different cases in the year-books upon this subject: he must then have known, that by the common law of the land an English bishop elected under a *congé d'élire* consecrated or even invested with the temporalities by the King was not a complete bishop till he was confirmed by the Pope; for this *confirmation* was the act, by which he received his spiritual jurisdiction or mission. This was expressly laid down in the Bishop of Salisbury's case, (Hil. 41 Ed. III. 6.) and could not have escaped the scrutinizing eye of Sir Edward Coke, had he been candid enough to have avowed it. "Al-  
" though he be elected, it behoveth him to be confirmed by the  
" Pope, and it may be that the Pope may refuse him for non-abi-  
" lity or other cause," &c. "*car tout soit il eslie, il convient etre con-*  
"*firm del pape, et poit estre que le pape luy voet refuser pur non abi-*  
"*litie ou autrement.*" This confirmation by the Pope appears by other cases equally known to Sir Edward Coke, to have been necessary for every English bishop; for it was holden (in 38 Ed. III. Mich. 31.) that " even after election and *confirmation* the  
" freehold



“ freehold of the temporalities was not in the bishop before he  
 “ had sued for them out of the king’s hands \*.”

BOOK III.  
 CHAP. IV.

The distinctive line of demarcation between the *spiritual* and *temporal* power is still more strongly drawn by the 27th of the same King, (A. D. 1353) under which act the penalties of *præmunire* are incurred for suing in a foreign realm (*i. e.* at Rome) and impeaching judgments given in the king’s courts, in any plea, *whereof the cognizance pertaineth to the king’s courts or of things, whereof judgments be given in the king’s courts.* This reservation or limitation clearly embraces all objects of the *civil* power; such are the possession and disposition of property *real* and *personal*, wills, &c: but it goes not to affect the validity of the sacraments of Christ’s church, the regulation of purely *spiritual* discipline, such as the mode of administering the sacraments, the form of rituals, the observance of feasts fasts &c, the active and passive requisites for conferring holy orders and *spiritual* jurisdiction, the conditions and effects of purely spiritual excommunication suspensions interdictions absolutions and what constitutes heresy and schism &c: of all which things the king’s courts have no cognizance.

Fair distinction between the *spiritual* and *temporal* power by 27 Ed. III.

We clearly perceive by the statute of *Circumspectè agatis* 13 Edw. I. A. D. 1285, which ascertains certain cases, in which the king’s prohibition does not lie, that the rights and privileges of the ecclesiastical courts were not pretended to be paramount.

The statute of *Circumspectè agatis*.

\* Rolls ab. 881.



BOOK IV. and independent of the legislature : for the application to parlia-  
 CHAP. III. ment to fix and determine the authority of these Courts Chris-  
 tian, and to limit the royal prerogative in controlling them is a  
 demonstration, that in the eyes of the nation at that time both  
 the authority of the courts and the prerogative of the king were  
 under the superintendence and control of parliament. This sta-  
 tute declares, that prelates shall not punish “ for leaving the  
 “ church-yard unclosed, or for that the church is uncovered and  
 “ not conveniently decked, in which cases none other penance  
 “ can be enjoined than pecuniary :” and several other matters,  
 that neither the bishop nor the king were by the Constitution  
 empowered to command or enforce without the authority of par-  
 liament. Upon this principle was it, that the ancient writ of  
 summons to parliament expresses one of the principal ends of the  
 parliament to be, to see and to protect the *civil* establishment of  
 religion, *De arduis et urgentibus negotiis statum et defensionem eccle-*  
*siae Anglicanae concernentibus.*

King John. This transcendent and exclusive superintendence of the *civil*  
*establishment* of religion, was as fully acknowledged by our Ro-  
 man Catholic ancestors to reside in the State, whilst they admit-  
 ted the *spiritual* supremacy of an universal bishop, as by their suc-  
 cessors, who have refused that supremacy to the see of Rome. It  
 is well known that the abandoned and profligate \* King John sent  
 Sir Thomas Herrington Sir Ralph Nicholson and Sir Thomas of

\* 4. Inst. 13.



London as secret ambassadors to the Grand Turk Admiralius Murmelinus, to offer to embrace his religion and to make his kingdom tributary to him, which the generous infidel nobly declined accepting of, from the contempt he had of the base proposer. This same King in the very next viz. the 14th year of his reign (by his charter of the 5th of May) surrendered his kingdoms of England and Ireland to Pope Innocent III, *cum communi consilio baronum*, as he inserted in the charter, binding himself from thenceforth to hold both his kingdoms as fœdary to the Pope, paying for them annually 1000 marks. He did homage and fealty to the Pope by the hands of Pandulphus his legate, and this was accepted and ratified by the Pope, as it is expressed in the *Bulla Aurea*. It was not necessary to live to the 18th century to see the futility of this surrender to the Pope. For we find among the Parliament rolls (Rot. Cl. An. 3 Ed. I. m. 9. in sched.) “Pope Gregory demanded of King Edward I. by letter the annual tribute of 1000 marks. The king answers, that without the prelates and nobles of his kingdom he can give no answer: and that he was bounden by his coronation oath to preserve the rights of his kingdom entire, and not to do any thing, which could affect his crown without their consent and advice.” And afterwards in the 40th year of Edward III. the Pope demanded of the King homage for his kingdom and all the arrears of the annual tribute granted by John (but never it seems paid) and threatened to proceed against him for recovery thereof: whereupon he convened his parliament and they passed a very

Papal claims  
refuted.



BOOK III. very special act, which is not amongst the printed acts, but is to  
 CHAP. IV. be found, (Rot. Parl. 40 Ed. III. num. 8) and in it they recite the whole matter and enter minutely into the nature of the sovereignty and independency of this realm, and the unfounded claim, which his Holiness set up to a temporal authority over it: alleging truly by “ the prelates dukes earls barons and “ gentlemen, that the said King John nor any other could put “ himself nor his kingdom nor his people in such subjection (or “ vassalage) without their consent and agreement; and that it “ appeared by much evidence that if it were done, it was without their consent.” And they pledged themselves to resist any attempts, that might be made by his Holiness to enforce his claim.

Acts of  
 Richard II.  
 prove the  
 same more  
 particularly.

Several acts were passed in the reign of Richard II, which emphatically confirm the observations, which I have made, and demonstrate that our ancestors seldom lost sight of the difference between the *spiritual* and *temporal* power, than their successors. For by the 1st of that king the legislature expresses the reasons and motives for their confirming the rights liberties and franchises of the church, viz. “ to nourish peace unity and “ concord in all the parts of our realm.” This was the only and proper trust and delegation from the community to the legislature.

By the 5th of this king the sheriffs were commissioned to apprehend



apprehend all preachers of heresy and their abettors. The legislature undertook not to examine or to determine, what should constitute heresy: that they left to the church. They affix guilt to these heretical preachers for *preaching without licence* (*i. e.* without faculties mission or jurisdiction) either *from the Pope ordinary or other sufficient authority*: a clear avowal on behalf of the English Legislature, 1st that they allowed of a primacy of *spiritual* jurisdiction in the see of Rome; 2dly that no *spiritual* jurisdiction could flow from the *civil* magistrate, and 3dly that they held the two powers perfectly separate and independent upon each other.

BOOK III.

CHAP. IV.

Sheriffs commissioned to apprehend preachers of heresy.

These legislators, who distinguished so very accurately the separate effects of each of the two powers, gave in the next year a fresh proof of their discrimination: for in the year 1383 they passed an act against aliens purchasing church benefices in England: for although they admitted, that the chief pastor of the church could give licence mission or jurisdiction to any person alien or native to preach the gospel of Christ in England, which was a pure *spiritual* power, the supremacy of which extended over the whole earth; yet as church benefices consisted of property, which is essentially subject to the control of the State, they properly excluded aliens *both Pope* and others from all enjoyment disposal or control over them. It was a further proof, that they considered presentations as a mere *civil* right subject to the jurisdiction of the King's courts, because the Legislature in

Act against aliens purchasing benefices in England.

the



BOOK III. the 12th of this same king (Richard II.) passed an act, that the  
 CHAP. IV. King's presentee should not be received to a church full of an incumbent, till he had *recovered it by law*. In a word, although this king by a particular statute passed in the 2d year of his reign, enjoined all his subjects to pay obedience and submission to Pope Urban, against the Anti-pope Clement VII, and therein called him the *only true head of the church*; yet he did not think it inconsistent with that declaration to enact, that the crown of England ought not in any thing touching the majesty or regality of the same crowne bee submitted to the bishop of Rome, nor the laws and statutes thereof to be taken away or enabled by him, &c. The conclusions, which Sir Edward Coke draws from these statutes are unwarrantable in the extreme. So far from proving, that there was any spiritual power in the king, they directly demonstrate, that King Richard acknowledged the *spiritual* supremacy in the see of Rome, though he asserted his own temporal sovereignty and regality to be wholly independent upon that see.

English Parliament acknowledges Pope Urban as head of the church.

The three Henries of the House of Lancaster,

Father Parsons expressly says, that after the death of Richard II. \* " entered and ensued in the crown three Henries of the line " of Lancaster, who had variable success in their lives and temporal affairs: though in religion and particularly in this point " of our controversy about spiritual power and jurisdiction they " were all one." The house of Lancaster having been removed by the deprivation and death of Henry VI. the four next Princes, who succeeded bring us down to the reign of Henry VIII.

\* Answer to the Rep. of Sir Ed. Coke, p. 312.



And of these four Princes Father Parsons also says \* “ in profes-  
 “ sion of religion they were all one: all and every of them pro-  
 “ fessing the same faith and holding the same form of Christian  
 “ Catholike religion, which all their ancestors had done both be-  
 “ fore and after the conquest. And this not only in other mat-  
 “ ters, but in the very point also of our controversy concerning the  
 “ practice and acknowledgment of the sovereign spiritual autho-  
 “ rity of the church and see apostolicke of Rome.” After this  
 unequivocal testimony by Father Parsons of the orthodox faith  
 of these seven Kings immediately preceding the reformation,  
 I shall not expect from any Roman Catholic at least an argu-  
 ment to prove, that any public acts of their reigns were repug-  
 nant to or inconsistent with the purity of the Roman Catholic  
 religion: nor shall I expect therefore to be considered as deviat-  
 ing from that religion, by commending or justifying the acts of  
 our ancestors, which asserted the *civil* rights of the church or  
 clergy of England against any civil or temporal claims of the see  
 of Rome. We have seen that Father Parsons commends every  
 one of them for submitting to the *spiritual* jurisdiction of the see  
 of Rome: and yet in each of their reigns (except that of the in-  
 fant Edward V.) some public national acts were done to abridge  
 check limit modify or regulate the *papal* rights claims or preten-  
 sions over the *civil* establishment of religion in this kingdom.  
 For *the civil establishment* of religion comprizes only such objects,

BOOK III.  
 CHAP. IV.

and the four  
 Princes next  
 succeeding  
 acknowledge  
 the Pope's  
 spiritual su-  
 premacy.

\* Answer to the Rep. 329.



BOOK III. as are under the control of the *civil* magistrate, and may there-  
 CHAP. IV. fore essentially be varied revoked or suppressed by the same  
 power, which constituted and established it.

Alterations  
 in the civil  
 establish-  
 ment of reli-  
 gion under  
 Henry IV.

Under Henry IV. the liberties of the church of England were repeatedly confirmed: and yet those religious persons were made liable to a *præmunire*, who should accept of a provision from Rome to be exempted from regular or ordinary obedience: or from payment of tythes: forfeitures of all their possessions were incurred by those, who should pay more than the usual or accustomed first-fruits to the Pope upon their promotions to ecclesiastical dignities. Provisions made from Rome of any benefice full of an incumbent were declared invalid: and the elections to ecclesiastical promotions were declared should be free and not interrupted by the Pope (or the King).

The like un-  
 der Henry V.

Under Henry V. the rights and franchises of the Church were again confirmed: and the ordinaries were empowered (*by Parliament*) to enquire into the application of the revenues of certain hospitals and charitable foundations. The invalidity of provisions from Rome, where benefices were full of an incumbent was again confirmed by the statute. For the extirpation of heresy powers were given to \* justices of peace justices of assize (not to enquire and still less to determine what was heresy but) to

\* 5 Rep. Caudrey's Case, 25.

“ enquire



“ enquire of those, that held errors heresies or lollardy and of  
 “ their maintainers and that the sheriffe and other officers might  
 “ arrest and apprehend them.”

BOOK III.

CHAP. IV.

In the reign of Henry VI. (which Father Parsons says \* “ en-  
 “ dured most catholiquely for neere 40 years”) the rights and  
 franchises of the Church of England (which are nothing more  
 nor less than the *civil* establishment of the Catholic religion) were  
 again confirmed. The same *freedom of person* was granted to the  
 clergy coming to convocation, as was enjoyed by peers coming  
 to parliament. (This proves, that they were otherwise liable to  
 arrests). In consideration of a subsidy granted by the Clergy,  
 the King granted a pardon of several offences and forfeitures to  
 all priests secular and religious: (proof of their liability to the  
*civil* power.) We see by a solemn determination in the year  
 books in the 8th year of this King, whose *reign endured so catho-*  
*liquely*, that the Judges solemnly determined (8 H. 6, fo. 3.) that  
 excommunication made and certified by the Pope had no force  
 to disable any man in a *civil way* within the realm of England:  
 and this was the law of the land: notwithstanding Father Parsons  
 rather tauntingly denies it, \* “ It groweth now somewhat more  
 “ loathsome and ridiculous to see Mr. Attorney run so often to  
 “ this common chymera of ancient common laws.” Wherever  
 a determination of the Judges is not made upon the statute law,  
 it is evidence of the common law: for the statute law alone can

The like  
 under Henry  
 VI.

Effects of  
 excommuni-  
 cation by  
 common law.

\* Par. Ans. p. 326.



BOOK III. alter the common law; and where there is no statute law, that  
 CHAP. IV. affects the subject before the court, our judges are bounden by their oath to judge by the *common law* of the land. Yet in as much as by the common law of the land certain *civil* effects were annexed to excommunication, which of course made a part of the *civil* establishment of the Roman Catholic religion in England, and this *civil* establishment could alone proceed from the English nation or community, we find these same judges allowing the disabling effects of *excommunication*, when it was certified in court by the ordinary or archdeacon: and the report book, which was written in Roman Catholic times and in a most *Catholic reign* as Father Parsons allows, gives this reason for the Pope's excommunication and certificate not civilly disabling an Englishman *pour ceo que il n'est minister le roye, ne de sa court, because the Pope is neither an officer or minister of the king or his court.*

*Civil effects of the ordinary sentence of excommunication.*

It further appears by the year books, which are evidence of what at that time was the common law of England, that the excommunications, of which the courts determined and the books spoke was looked upon so much a *civil* punishment, that the ordinaries were under obligation of removing it or absolving the excommunicated party whenever the king should order it, upon finding, that there was not just cause for inflicting the punishment. So it was holden, (14 H. IV. 14.) \* that excom-

\* Rolls' Ab. 884.

munication



munication by the Pope should not operate any disability of  
 suing, for that the court could not write to the Pope to BOOK III.  
CHAP. IV.  
 absolve him, if the cause did not belong to him: and no man  
 shall be disabled by an excommunication imposed by any other  
 person than a bishop within the realm, to whom the court might  
 write to absolve him, if there were cause for it. But neither the  
 king nor parliament in those days ever pretended to exercise  
 any jurisdiction or control over the pure *spiritual* powers of the  
 bishops, by way of admitting to the sacraments and the other  
 rites of the church those, whom the bishops thought un-  
 worthy of them. The *civil* effects of excommunications, which  
 were allowed of by the English nation the legislators were con-  
 scious proceeded from themselves; and therefore, though they  
 permitted clergymen to pronounce the sentence, yet they always  
 kept up their power of control over it.

Under Edw. IV. we find the Judges disallowing the claim The like un-  
der Edw. IV.  
 of sanctuary made by the prior of St. John within his priory,  
 as granted by the Pope: for by no right could the Pope affect  
 or interfere with the municipal laws of this land: but to secure  
 criminals from legal process by granting them a privileged recess  
 within this realm, would certainly be a direct and immediate  
 interference with the civil laws of the country: therefore the  
 civil or legislative power was intitled to resist every encroach-  
 ment and attempt upon its own rights. We also see these Ro-  
 man Catholic Judges determining, that any application to Rome  
 by



BOOK III. by the clergy for any redress in ecclesiastical matters, which could  
 CHAP. IV. be procured from their ordinary within the realm was within the  
 statute of præmunire (9 Ed. IV. 3.) “ Si clerke fue auter home  
 “ en court de Rome de chose espirituel, lou il poit aver remedy  
 “ de ceo en le court son ordinarie deins le royaulme, il aura un  
 “ præmunire, quia trahit ipsum in placitum extra regnum, ideo in  
 “ casu statuti.” This evidently proves, that our ancestors  
 allowed a supremacy of *spiritual* jurisdiction in the See of Rome;  
 for to a supreme court alone can an appeal be made: and this  
 determination of the court supposes, that there may be *spiritual*  
 matter, where a clergyman may not have remedy from his or-  
 dinary, but only from the Pope. Upon this case Sir Edward  
 Coke most unwarrantably concludes, that every application to  
 Rome was liable to a præmunire, when the year-book says con-  
 ditionally that he shall not have recourse to Rome, where he  
 may have his remedy in the court of his ordinary.

Our Roman  
 Catholic an-  
 cestors jea-  
 lous of the  
 Pope's en-  
 croaching  
 upon their  
 liberties.

Notwithstanding our ancestors were so submissive to the *spi-  
 ritual* jurisdiction of the See of Rome, yet so jealous and te-  
 nacious were they of that See's usurping or assuming any *tem-  
 poral* power over the State, that \* the King and Council stopped  
 the Pope's legate at Calais and would not permit him to come  
 into England, until he had sworn to attempt nothing against the  
 King or his crown. One and the same spirit and principle

\* 1 Hen. VII. 16.



must have actuated our Roman Catholic ancestors, who demanded this oath of the Pope's legate to attempt nothing against the King or his crown and their Roman Catholic posterity, who have sworn that the Pope has no *temporal* power direct or indirect over this realm.

BOOK III.

CHAP. IV.

The few weeks of the infant Edward Vth's reign were rather an interregnum than a reign: and during it no act appears to have been done concerning the civil establishment of religion.

Edward V.

The only determination during Richard III.'s reign upon any point affecting the *civil* establishment of religion with reference to Rome, was in the case of Peckham and Sondes\*, where the defendant by appeal to Rome had procured a *breve* or order (*delegacy*) to the spiritual court to set aside a will. But it was resolved by the Judges in this case, "that such judgment of the court of Rome shall not prejudice any man at the common law; for if an excommunication be certified here that such a man is excommunicated in the court of Rome or for any thing which is pending in the court of Rome, this shall not be any disability here;" and the plea was rejected. This is a demonstration, that our Roman Catholic ancestors, although they unequivocally submitted to the *spiritual* primacy both of dignity

Richard III.

See of Rome  
had no *civil*  
power over  
Englishmen.

\* 2 Ric. III. 22. Mich.

and



BOOK III.

CHAP. IV.

and jurisdiction of the See of Rome, yet they would not against the will of the community allow of any power in the Pope as the head of the church, that could produce a *civil* effect upon Englishmen: thus rightly distinguishing the true criterion of *spiritual* power: which had it been always attended to, would have effectually prevented all the misunderstandings disagreements and differences between church and state, that have desolated kingdoms and brought scandal and infamy upon the sacred character of Christianity.

Henry VII.

In the reign of Henry VII. who as Father Parsons observes\*, “ended happily his life and raigne in the Roman Catholic religion without any change or alteration,” we have a very remarkable and solemn declaration of the English nation touching the power of the See of Rome over any *civil* or *temporal* objects in this realm. It cannot too frequently be repeated, that the powers, which the church possesses in her own right, she holds immediately of Christ by divine institution: whatever therefore may be ordained by its *governors*, ought not to be resisted prevented or hindered by any *civil* or *human* power whatever. Thus if the Bishop of Rome, whose spiritual supremacy and jurisdiction our Roman Catholic ancestors admitted, had suspended or excommunicated the Archbishop of Canterbury, or had refused to send the pall unto or confirm an Archbishop elect, the parlia-

\* Anf. to Coke, p. 340.



ment could not have obliged or enforced spiritual submission or obedience to the person, who possessed not his authority from the only source, from which they held it could be derived: and this in their persuasion was the See of Rome, as keeping up the primacy of St. Peter over the Christian church.

A very notable and striking instance of the Pope's inability to affect any temporal matter in this kingdom without the consent of the nation occurred in the seventh year of King Henry's reign. The Pope had excommunicated all such persons as had bought alum of the Florentines: and as many English merchants had purchased of them a quantity of alum as a necessary commodity for the cloth manufactory, the year books inform us (1 H. VII. 10.) "That on the first Saturday after the Purification of the Blessed Virgin, in the parliament chamber the Chancellor put the question to the Judges; what should be done with the alum purchased of the Florentines, that was then in England, because his Holiness the Pope had excommunicated all, who had bought it of the Florentines? And it was answered by most of the Judges: that when merchandise came into this country under the safeguard (or license) of the king, that the king should also give a safeguard (or warrant) to the merchant, that the goods should not be spoiled (or damaged) in his country and especially by his subjects." Being therefore of opinion that the sentence of excommunication published

Case of the  
excommuni-  
cated pur-  
chasers of  
alum.



BOOK III. by the Pope on this occasion acting only upon a *civil* or *tempo-*  
 CHAP. IV. *ral* concern or object, was of no validity in this country, they  
 therefore ordered the alum to be restored to the purchasers, and  
 the excommunication to be disregarded, *Et donques en conclusion*  
*tenend. q' les biens sert restores &c.*

Bishops en-  
 abled to im-  
 prison incon-  
 tinent priests.

To conclude my observations upon the interference and con-  
 trol of our Roman Catholic ancestors over the *civil* establish-  
 ment of their religion, we shall find the full proof and confirma-  
 tion of them in 1st of Hen. VII. c. 4. intituled "An act to  
 "punish priests for incontinency by their ordinaries:" by  
 which it was made "lawful to all archbishops and bishops and  
 "other ordinaries having episcopal jurisdiction to punish and  
 "chastise priests clerks and religious men, being within the  
 "bounds of their jurisdiction, as shall be convicted before them  
 "by examination and other lawful proof requisite by the law  
 "of the church of advowtry, fornication, incest or any fleshly  
 "incontinency, by committing them to ward and prison, there  
 "to abide for such time as shall be thought to their discretions  
 "convenient for the quality and quantity of their trespasss," &c.  
 In this act, we see the civil legislature giving to the bishops a  
*civil* power as temporal magistrates to punish corporally by im-  
 prisonment, and to deprive English subjects of their liberty as long  
 as in their discretion they might think proper. This the bishops  
 could not have done by virtue of their episcopal authority: nor



were priests or religious by virtue of their order ever exempted from the jurisdiction of the temporal courts, but only by the grant of the supreme *civil* power.

BOOK III.  
CHAP. IV.

This right or power of the ordinary to imprison their *spiritual* subjects for incontinency from the year 1485 became one of the rights and franchises of the Church of England; but as it was of so recent a date, and we trace the commencement and grant from this act of Henry VII. there is no difficulty in forming our minds to the persuasion or conviction of its having been granted by the State: but no man will seriously contend, that this act of parliament may not be amended altered or repealed as well as any other act upon our statute books. Thus stand all laws of the civil establishment of religion, which are generally comprised under the terms *rights liberties privileges and franchises* of the church: and these were repeatedly confirmed by our ancient statutes. Their origin and establishment were equally *civil* and *temporal*, whether they arose out of the common law or the statute law: for each law is the direct emanation of the will of the people, by which alone it acquires its binding force. The existing generation *wills* the continuance of an immemorial usage, which cannot be traced to its origin: and that gives sanction to the *common law*: the same will of the existing community gives continuing vigor and force to a written act of parliament, and constitutes the operative quality of the *statute law*.

Origin of the rights of the church of England.

Force of the common and statute law.



## BOOK III.

## CHAP. IV.

Parsons mistakes the common law.

Had Father Parsons been more attentive to the source origin nature and effects of municipal laws in general, he would not have fallen into such incongruity of argument upon the *common law* of England. He denies \* that sanctuaries in England were granted or allowed by the common law of the land, asserting "that they had and have from the See of Rome their franchises and liberties: not from the common law, but from the canon and ecclesiastical:" and † he expressly allows, "that it appeareth that the delicts of clergymen in those days being enquired of and punished only in the bishop's courts and not in the temporal, which was a dignity and no small pre-eminence of the prelates of England above many other countries, who neither then, nor now have the like absolute pre-eminence in all things, as before hath byn shewed. For divers cases and causes doe appertayne only to spiritual courts in England, which are handled also by secular magistrates in sundry other countreys: as namely that of testaments and the like. And this is to be ascribed to the special piety and devotion of our Catholyke kings and country." Can there be a more direct avowal, that these rights or franchises were granted to the church of England by the English community and not by the See of Rome? Their continuance therefore depended upon the will of the English parliament, not upon that of the Pope or any governors of the church of Christ.

\* Anf. to Coke, p. 332.

† Ibid. p. 338.



In this opinion agree our most approved authors of all times. BOOK III.  
CHAP. IV.  
 Parsons seems to be little aware of his own assertions. He surely would not pretend that the See or the Court of Rome can subject wills (for example) to the jurisdiction ecclesiastical in England, which are not so in other countries without the consent and will of the English legislature. If that be so, it is then false, that the ecclesiastical courts, which determine causes testamentary in England, derive their power or jurisdiction for this purpose from Rome, but from the common law of England: Common law gives force to the ecclesiastical courts. which as it erected and established the courts for this end, so does it continue necessarily to superintend and control them. So said Linwood some centuries before Parsons existed, that the cognizance of wills, *non de jure communi, sed de consuetudine Angliæ pertinet ad judices ecclesiasticos.* \* *Consuetudo Angliæ* is the common law of England. Upon which says Sir M. Hale †, “It is the custom or law of England, that gives the extent and “limits of their external jurisdiction *in foro contentioso.*” But the nature of *ecclesiastical* or *spiritual* courts will form the subject of the ensuing chapter.

\* Linwood Exercit. de Testamentis, cap. 4. in glossa.

† Hist. of Com. Law, l. i. c. 2.



## C H A P. V.

## OF SPIRITUAL OR ECCLESIASTICAL COURTS.

*Apology for a wrong Assertion upon the Nature of these Courts in the Jura Anglorum. The Power of Excommunication gives the Right of examining Facts by Witnesses &c. in Court. Nature of Appeals to Rome. Nature of Spiritual Courts. The Canon Law adopted by the Common Law of England.*

BOOK III.

CHAP. V.

Ecclesiastical courts.

Unwarrantable opinion upon the source of the jurisdiction of these courts.

THE next part of the civil establishment, which I have undertaken to consider is the nature and jurisdiction of our *spiritual or ecclesiastical courts*: and upon this subject the misconception and misrepresentation of some writers appear to have been almost unbounded. I may be thought by some in my *Jura Anglorum* (p. 251) to have spoken too generally against the *spiritual* jurisdiction of ecclesiastical courts by saying, that “ the  
 “ courts themselves were purely civil or temporal, in as much as  
 “ they were created supported and maintained merely by the  
 “ civil or temporal power, and acquired their whole force and  
 “ authority from the civil legislative body of that community,  
 “ in which they were established, or which chose to submit to  
 “ their authority and jurisdiction. It would be equally absurd  
 “ to look for any divine mission or authority or special guidance  
 “ of Almighty God in the old judges of the consistory or other  
 “ courts



“ courts of Rome, to which our ancestors resorted, as it would  
 “ be ridiculous to expect a peculiar gift of divine grace and  
 “ inspiration in a modern surrogate or proctor of Doctors’  
 “ Commons, whither we now carry our suits of the like  
 “ nature.” This passage is incorrect and false in excluding  
 thus generally all *divine mission and authority* from ecclesiastical  
 Courts. The fact is otherwise.

BOOK III.  
 CHAP. V.

From what I have already said, it will I hope have appeared,  
 that the successors of the Apostles, as governors of Christ’s  
 church upon earth, possess by *divine right* a power of a peculiar  
 quality, which is essentially supreme in its nature, and wholly  
 independent of all temporal or civil authority, and from which  
 it differs by the diversity of its delegation, the objects it affects,  
 and the means by which it operates.

Church government being instituted by God himself must  
 necessarily be perfect in its nature: now the supremacy and  
 compulsory powers of the *governors* over the *governed* are re-  
 quisite to the perfection of every government: and as the church  
 itself is a *visible* society of human individuals, and \* “ for the  
 “ due exercise of religion, it is required that open profession  
 “ of it be made by each individual, so as to be seen by others,”  
 it follows, that the governors of this society must be invested

Power of  
 church go-  
 vernors.

\* Warburton’s Alliance, p. 51, Hurd’s edition.

with



## BOOK III.

## CHAP. V.

with powers of enacting and executing by external means such ordinances and practices, as concern the exercise of religion. This imports no power of coercion. But it supposes a right of judging: and judgment implies the right of investigating, which can only be made by examination of facts. If therefore a Christian bishop, or church governor, hold spiritual jurisdiction over his flock by *divine right*, and thereby have fundamental authority to judge censure and excommunicate a human being subject to his jurisdiction, which are public and external acts, he must by necessary consequence possess the right power and authority of examining witnesses and making the necessary enquiries into the facts, upon which alone he can form his judgment. The principal power carries with it all incidental rights and consequences. As far then as a Christian bishop is empowered to exercise his external jurisdiction over his spiritual subjects independently of the civil power (that is to the whole extent of his spiritual mission) so far has he in his own diocese a right to enquire examine pronounce and execute judgment: but the matter or object of the judgment, and the judgment itself must be purely *spiritual* and within the resort and competency of the spiritual power\*. Thus spoke the churches of France

Nature of  
spiritual judgments.

\* Thus says Warburton (p. 127, Hurd's edit.) "For as to what is purely "episcopal, that is, spiritual in the prelate's office, his superintendency over "the clergy of his diocese, there is no need of a court of judicature to assist "him in the discharge of it." And (p. 128, Hurd's edit.) he says, "Eccle- "siastical courts were erected to take care of those things, which civil courts "were incapable of inspecting."

assembled



assembled in the year 1645, thirty-seven years before they signed BOOK III.  
 their four famous propositions: \* "The limits of the spiritual CHAP. V.  
 "power ought justly to be marked from the nature of the object, Objects of  
 "upon which it is to operate and the end, to which it tends. spiritual  
 "So that if the matter in question be purely spiritual, if by power.  
 "its nature it tend to a supernatural end, as to the augmentation  
 "of grace and to the advancement of salvation, there can be  
 "no doubt, but that this matter is necessarily of the resort of the  
 "spiritual power. Gerson the chancellor of the university of  
 "Paris defines the spiritual power, a power instituted by Jesus  
 "Christ, which has for its object a spiritual thing and tends to a  
 "supernatural end."

According to the gradation of the *spiritual* power in the Gradation of  
 hierarchy, is there an appeal from the judgment of the ordinary. power in the  
 Before the reformation, as our Roman Catholic ancestors, who hierarchy and  
 held the supremacy of the pope, deduced from him the order appeals.  
 of their hierarchy, they allowed an appeal from the judgments  
 of the ordinary to the metropolitan and from him to the see  
 of Rome. And as according to the general Roman Catholic

\* Vid. Pey. T. 2, p. 12, who quotes Les Memoires du Clergé tom. iv. coll. 314,  
 and also the German divine Schmidt as follows: "Causæ ecclesiasticæ vel sunt  
 "ex natura indoleque suâ propriè tales; eæ nimirum, quæ non pro objecto ha-  
 "bent commercium quoddam civile, aut temporale quidquam, sed cultum Dei  
 "animarumque salutem: uti quæ sacramenta concernunt, res liturgicas, immo  
 "ministorum sacrorum electionem, potestatem, jurisdictionem sacram."



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CHAP. V.

doctrine each bishop has by divine institution ordinary power within his own diocese, though subject to appeal to the archbishop of the province patriarch or pope, therefore did our parliament formerly prohibit under the severest penalties all applications to Rome, except in cases of appeal. Since the reformation no further *spiritual* appeal is allowed of by statute law, than to the metropolitan. Any appeal however upon an object of the real *spiritual* power could neither be given nor prohibited by the *civil* magistrate.

A Christian bishop not entitled to a forensic court.

As the power of examining judging and pronouncing sentence upon pure *spiritual* matter is inherent in every Christian bishop independently of the State, it carries with it no establishment of any public contentious or forensic court: much less any coercive or compulsive powers of enforcing their process and sentences by *civil* or coercive means. Thus during the three first centuries of Christianity were all judgments upon *spiritual* matter given and enforced by the governors of the church: and then no other than spiritual matter came before them, for they had no aid of the magistrate to affect any objects of the *temporal* or *civil* power.

True ground of appeals to Rome.

Hence distinctly appear the true origin ground and nature of appeals to the see of Rome from all particular churches in communion with her. In the principles and belief of Roman Catholics she is the mother church, and possesses a primacy both of



of dignity and jurisdiction over the whole church of Christ. BOOK III.  
CHAP. V.  
It is by this tenet of the necessity for each particular church to be in communion with the see of Rome as the mother church and centre of the unity of the Catholic church, that Roman Catholics primarily and fundamentally differ from all those societies of Christians, which have separated from her, and which consequently hold the supremacy of the *spiritual* power to be within themselves. Thus the Greek church held the supremacy of *real spiritual* power ( *i. e.* the power of the keys) to reside in their patriarchs. The truth or right of either side becomes a subject of polemical discussion, which is the province of divines, to whom I leave it.

The right of appeal to the see of Rome as it exists according to their own principles and belief in Roman Catholic countries, when confined to the *real and strict* right, cannot possibly be obnoxious to the civil government of any state: for it extends only to such matter, as is not liable or subject to the power or control of the state. Had the practice therefore never deviated from the principle or the right, the Roman Catholic church would not have had cause to lament the fatal consequences of the many jealousies and animosities of her children, that have ended in the separation of whole nations from her communion.

Appeals when confined to their proper objects are innocuous to the State.

The civil establishment, which this nation first gave to the Rights of the church independent.



BOOK III.

CHAP. V.

Christian religion took away nothing of the rights and powers annexed to the governors of the Christian church: whatever they could do before the civil establishment was granted, that they retained the power of performing after it was established independently of the state: for the rights and powers, which by their order or jurisdiction they were entitled to, never could be surrendered into the hands of the civil magistrate. By attending closely and steadily to the rights and powers enjoyed by the church of Christ through the gift or institution of her divine master the difference between the *spiritual* and the *temporal* powers will be clearly perceived: and we shall be thereby enabled clearly to trace the confusion, that has been introduced by many writers into the subject.

Spiritual or  
ecclesiastical  
courts.

When by the municipal law of the land ecclesiastical or spiritual courts were erected they required all the necessary requisites for civil courts; that is they were made contentious forensic and public: and every thing, that seemed even remotely to affect churchmen or church property was brought under their jurisdiction. They proceeded according to the rules of the civil (Roman) and canon law: and the appeal, which was formerly from the Archbishop to the Pope, has been since the reformation from the Archbishop to the King in chancery, where delegates are appointed to revoke or confirm the sentence. We must always recollect, that the Roman civil law, and the Canon law have no binding force or obligation upon British subjects, but in as much



as they are adopted by the British nation \*. I speak not of such parts of the *canon* law as enjoin matter of a pure spiritual nature. The ecclesiastical laws, by which these courts proceed are subject to the municipal laws of the land. For as the laws and statutes of the realm have prescribed to the ecclesiastical courts their bounds and limits, so the courts of common law have the superintendency over them to keep them within the limits of their jurisdiction; and to judge and determine, whether they have exceeded those limits or not and to act accordingly. This is consonant with the reason of the fact; for these *courts* were instituted by the will of the community, and therefore they must remain liable to that power, by which they subsist. The establishment of these courts neither weakened nor abolished the bishop's *spiritual* power over his flock: but as now he came to exercise it sometimes in open court and in a public forensic manner, by a natural inattention to the objects of the suits and from the inadvertent application of the *term spiritual* to the court, in which a *spiritual* person presided, and from the general confidence, which the faithful in those days placed in the prelates of the church, it was generally supposed, that whatever act decision or sentence proceeded from the bishop in his own court was an act of his pastoral jurisdiction. This jurisdiction he enjoyed by *divine* right independently of the civil magistrate: therefore the acts of it could not be controllable or amenable to the *temporal* or *civil* power.

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CHAP. V.

Ecclesiastical laws.

Cause of confounding the civil and the spiritual power.

\* Hale's Hist. Com. Law, 41. 1 Hale's Pl. Cr. 408.



## BOOK III.

## CHAP. V.

External and  
forensic jurif-  
diction.

The *external and forensic judicial* capacity of the bishop could not authorise him to perform those things, which by his pastoral jurisdiction he was by *divine right* enabled to do. As to all things therefore, which the bishop was empowered to do in court, which without a court he might not have enjoined and enforced independently of the civil magistrate, the bishop is to all intents and purposes one of the king's judges: and as to all matters, which by virtue of this *forensic judicial* capacity he is enabled to perform, he receives his jurisdiction immediately from the king, who appoints him as it were the judge of this court. Rare indeed are the applications to these courts upon pure *spiritual* matter, which is out of the control or competence of the civil magistrate. I was not therefore warranted to exclude universally all divine authority and mission from these courts, as I did in my *Jura Anglorum*: but whatever I have there said of these ecclesiastical courts is strictly applicable to the contentions and forensic quality of them, which they receive from the *temporal* power, and to all those matters, which that quality draws under their cognizance and jurisdiction, which are the effects of the *civil establishment* of religion in this country. For the *civil* establishment totally depends upon the community, which instituted it, and consequently whilst it lasts must for ever remain accountable and amenable and subject in every thing, which it affects to the control and supreme authority of the sovereign power of the state, which gave it rise and upholds its continuance. Where the last resort of justice lies, there rests the supremacy of jurisdiction,

Origin and  
preservation  
of the *civil*  
establishment.



jurisdiction, as is evident. The ultimate appeal in these *spiritual and ecclesiastical courts* from the Archbishop to the Pope before the reformation, and to the King in chancery by his delegates since the reformation, has given occasion to two very opposite and in my humble conception both very false conclusions. The first tended to vest in the pope or bishop of Rome a sovereign and controlling power by divine institution over all causes persons and things indiscriminately, which were subject to the jurisdiction of the *spiritual or ecclesiastical courts* in England, consequently that all the judges and officers of these courts received their power and jurisdiction from the see of Rome. For Father Parsons says \*;

“ touching temporal laws, they are to be made or altered by the  
 “ English prince and parliament; but ecclesiastical laws of the  
 “ church, if they be positive and not divine, he (the Pope) might  
 “ in all those ancient times, upon just causes alter: in that he  
 “ might alter those canon laws, that were admitted in England  
 “ and thereby made English laws.”

BOOK III.  
 CHAP. V.

Effects of  
 appeals to  
 Rome.

I hope I have elsewhere sufficiently proved, that laws framed by a foreign legislative power, and adopted by a state, become municipal laws and acquire their binding quality in the adopting state by virtue only of the act of adoption. So the canon law, (so much of it at least, as concerns temporal objects) which is defined to be a law made and approved of by Popes and councils obliges not an Englishman, because either the popes or

How foreign  
 laws adopted  
 by a state ac-  
 quire their  
 force.

\* Answer to Sir E. Coke, p. 319.

councils



BOOK III.

CHAP. V.

councils have enacted the thing enjoined (as for example the payment of tythes, immunities from taxes, probate of wills, &c.) but because the English nation has adopted the law and incorporated it with the municipal laws of the land\*. “ Their authority is founded merely on their being admitted and received “ by us, which alone gives them their authoritative essence and “ qualifies the obligation. And † we are not bound by their decrees further or otherwise, than as the kingdom here has, as it “ were transposed the same into the common and municipal laws “ of the realm, either by admission of or by enacting the same, “ which is that alone, which can make them of any force in England. I need not give particular instances: the truth thereof “ is plain and evident and we need go no further than the statutes of 24 Hen. VIII. c. 12. 25 Hen. VIII. c. 19, 20, 21, and “ the learned notes of Selden upon Fleta and the records there “ cited.” In which notes or dissertation upon Fleta, the learned commentator goes fully into the case of the barons at Merton refusing to adopt a canon law; which is evidence, that a canon of the church affecting civil matter (such is the legitimation of children) could not oblige nor bind Englishmen without the consent or adoption of it by the English nation.

The true spiritual power of Courts Christian.

From what has been said it follows, that the whole ground, upon which church governors can exercise any external judicial power over their respective flocks, independently of the state, is

\* Sir M. Hale's Hist. Com. Law, c. 2.

† Ibidem.

their



their *spiritual* jurisdiction or mission, which they have received to feed govern and superintend a particular part of the fold of Christ. BOOK III.  
CHAP. V.  
This they receive not from the *civil* magistrate; nor do the objects, upon which it can operate fall under the competence or resort of the civil or temporal power. Thus every judicial act or form of process or sentence or decree or injunction of an episcopal or ecclesiastical court in England, which is an effect of the *power of the keys* acquires not force and efficacy from the authority of the king or parliament, but exclusively from the *divine* source, from which every orthodox Christian believes the apostolical mission to emanate\*.

Hence

\* This distinction between the episcopal power in the ecclesiastical courts is very fully and fairly set forth by Dr. Carleton bishop of Chichester in his *Treatise of Jurisdictions Episcopal Regal and Papal*, c. i. p. 8, 9. “ Bel-  
“ larmine (saith he) disputing of jurisdiction saith: There is a triple power  
“ in the bishop of Rome: first of order; secondly of internal jurisdiction;  
“ thirdly of external jurisdiction. The first is referred to the sacraments:  
“ the second to inward government, which is the court of conscience: the  
“ third is that external government, which is practised in external courts:  
“ and confesses, that of the first and second there is no question between us,  
“ but only of the third. Then of this we are agreed, that the question be-  
“ tween us and them is only of jurisdiction coercive in external courts,  
“ binding and compelling by force of law and other external mulcts and pu-  
“ nishments, besides excommunication. As for spiritual jurisdiction of the  
“ church, standing in examination of controversies of faith, judging of heresies,  
“ deposing of heretics, excommunication of notorious offenders, ordination of  
“ priests and deacons, institution and collation of benefices and spiritual cures



## BOOK III.

## CHAP. V.

Episcopal  
rights cannot  
be surren-  
dered.

Hence follows a corollary, that no governors of the whole or any part of the church of Christ can upon any account or upon any occasion or in any manner for themselves or their successors, surrender into the hands of the *civil* magistrate any particle of that power or jurisdiction, which by *divine* right or institution is annexed to their order and authority. Thus says Sherlock, in his

*Summary*

" &c. (N. B. He does not say *induction* or *investiture of temporalities*.) This  
" we reserve entire to the church, which princes cannot give or take from the  
" church. This power has been practised by the church without coercive  
" jurisdiction, other than of excommunication. But when matters handled in  
" the ecclesiastical consistory are not matters of faith and religion, but of a *civil*  
" nature, which yet are called *ecclesiastical*, as being given by princes, and ap-  
" pointed to be within the cognizance of that consistory, and when the cen-  
" sures are not *spiritual* but carnal, compulsive coercive, here appears the power  
" of the *civil* magistrate. This power we yield to the magistrate; and here  
" is the question, whether the magistrate has right to this power and jurisdiction?  
" This then is that, which we have to prove: that *ecclesiastical* coercive power  
" by force of law, and corporal punishments, by which Christian people  
" are to be governed in external and contentious courts, is a power, which  
" belongs rightly to Christian princes." And again, page 42. " Con-  
" cerning the extension of the church's jurisdiction, it cannot be denied, but  
" that there is a power in the church not only *internal*, but also of *external*  
" jurisdiction. Of *internal* there is no question made. *External* jurisdiction  
" being understood all, that is practised in *external* courts or consistories is either  
" *definitive* or *mulctative*. Authority *definitive* in matters of faith or religion  
" belongs to the church: *mulctative* power may be understood either as it is with  
" coercion, or as it is referred to *spiritual* censures. As it stands in *spiritual* cen-  
" sures,



*Summary* of the Controversies between the Church of England and the Church of Rome, (p. 119) “ If bishops will not exercise that power, which Christ has given them, they are accountable to their Lord for it, but they cannot give it away neither from themselves nor from their successors, for it is theirs only to use, not to part with it. And therefore every bishop may (he should have said *ought*) re-assume such rights, &c.”

BOOK III.  
CHAP. V.

“ fures, it is the right of the church, and was practised by the church, when the church was without a Christian magistrate, and since. But coercive jurisdiction was never practised by the church, when the church was without a Christian magistrate; but was always understood to belong to the *civil* magistrate, whether he were Christian or heathen.” I fully admit of what this learned Divine says upon this subject, except as to the *mulctative* power, which he attributes to the church independently of the *civil* magistrate: for if he carry this power to an immediate controlling or commanding jurisdiction over the body or property of the Christian, it must be denied. The church may conscientiously bind a Christian or rather declare his conscientious obligation, to make restitution of a thing stolen, and reparation for an injury done: she may also impose corporal punishment such as fasting watching prayer &c. charitable donations and public or private penance and humiliation, corporal works of mercy such as visiting the sick imprisoned &c. by way of atonement for the sins they may have privately confessed, or of which they may have been publicly and notoriously guilty: but the only means the church possesses of enforcing these injunctions or impositions, are such as the *civil* magistrate does not, viz. refusal of absolution suspension interdiction spiritual censure and excommunication. I now confine these spiritual weapons purely and strictly to their essential nature, as they were used by the apostles and their immediate successors, before the church had received any aid or protection from the civil sword or secular power.



BOOK III. They cannot upon any *human* grounds motives or considerations  
 CHAP. V. whatsoever bind or fetter themselves in the exercise of their power and jurisdiction, whenever the cause of religion calls for it. And if in any instance they have swerved from their duty in attempting to make a surrender of their rights powers and jurisdiction, it is their duty to re-assert and exercise them independently, and even if occasion call for it, in defiance of the civil magistrate.

Right of the church to convene and decree without the magistrate.

In this light and with a close view to the proper objects of the *spiritual* power should be seen the act of the submission of the clergy to king Henry VIII. and their undertaking never to convene without the king's writ of convocation, nor to pass any decrees whatsoever without his royal assent. It certainly is prudent in church governors so to moderate the exercise of their spiritual powers as to go hand in hand, *quantum per Christi leges licet*, with the civil magistrate. But as there can be no certainty of the civil magistrate's always acting agreeably to the laws of Christ, so is it unjustifiable in the governors of his church to leave the exercise of their powers and duties in the discretion and will of the *civil* magistrate. Occasions may arise in the church both as to dogm and external discipline, which may require the governors to convene and consult, and to proceed to some declaration decree or canon, that shall bind the faithful subject to their jurisdiction; and at the same time the *civil* magistrate may wish and attempt to resist and impede their proceedings. The necessity of such a convocation and of the acts of the church governors



so convened, I presume to arise out of circumstances not within the competence and resort of the *civil* power of the state. The episcopal duty rights and authority in such a case are the same in the church of Christ at this hour, as they were in the infant church whilst the apostles lived. And I shall presume upon the assent of every Christian reader to the assertion, that what the apostles could do independently of the *civil* magistrate in the first century of Christianity, that and that alone may their successors do independently of the *civil* magistrate in the eighteenth. Let us then see what was actually done in the primitive church without the concurrence of the state and apply the necessary conclusion.

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CHAP. V.

We read in the Acts, ch. xvth, "That some coming down from Judea taught the brethren, that unless you be circumcised after the manner of Moses, you cannot be saved." Here was matter both of faith and external discipline. (ver. 2.) "And when Paul and Barnabas had no small contest with them, they determined that Paul and Barnabas and certain others of the other side should go up to the apostles and priests to Jerusalem about this question." (ver. 4.) "And when they were come to Jerusalem they were received by the church and by the apostles and ancients." (ver. 6.) "And the apostles and ancients came together to consider of this matter." This is the first convocation or council of the church we read of: the object of its discussion was purely spiritual, though partly external: nor was there any application to the civil magistrate: nor any reference or consideration

First convocation of the church.

Objects of this council twofold: faith and external discipline.



BOOK III.  
CHAP. V.

deration had to the municipal laws of Antioch, where the dispute arose. For the Catholic quality of the church of Christ, as I have often said, consists not only in the universality of its doctrine, but in the aptitude of its application to all possible forms of government, and its essential independence upon any *temporal* power whatsoever. (ver. 7.) “And when there was much disputing amongst them, Peter rising up said to them\*,” &c. The result of this first convocation or council of the church, must be strictly attended to: they first allege the cause of the error before they decree upon it. (ver. 24.) “For as much as we have heard that some, who went out from us have troubled you with words, subverting your souls, to whom we gave no commands,” &c. Hence we see, that it is not enough to have embraced and to believe the Christian religion, in order to exercise the functions of preaching and teaching it; but the teachers and preachers must have a lawful mission, that is, the governors of the church must give them their commands, i. e. their spiritual jurisdiction to entitle them to the obedience of the faithful. (ver. 25.) “It hath seemed good unto us assembled together to choose out men and send them to you with our dearly beloved Paul and Barnabas.” (ver. 27.) “We have sent therefore Judas and Silas, who themselves also will by word of mouth tell you the same things.” From this collation of spiritual power to Judas and Silas, the Antiochians were bounden in con-

Effects of spiritual jurisdiction or mission.

\* This founds one of the Roman Catholic arguments for the primacy of an universal bishop.

science



science to obey and submit to them as their *spiritual* superiors: and to believe what they should tell them by word of mouth upon this very point of faith and discipline, concerning which they had been led into error by those, who had no jurisdiction or mission to teach them. The decree or sentence of this convocation or council, is also very worthy of our attention: for although there *were much disputing* in it, yet the result of it is expressly said to be guided by the spirit of truth. (ver. 28.) “For  
 “ it seemeth good unto the Holy Ghost and to us to lay no further burthen upon you than these necessary things: That you  
 “ abstain from things sacrificed to idols and from blood and from  
 “ things strangled and from fornication: from which things  
 “ keeping yourselves, ye shall do well. Fare ye well.” The effect of this decree as to the article of faith was, that circumcision was not necessary for salvation in the new law, as the Jewish law was then abolished. It moreover bespeaks the power of the church to impose discipline upon the faithful dispersed through the whole universe even in such indifferent matters, as to what shall be eaten or abstained from: hence fasts are ordained by the church on particular days &c. And these things though obligatory whilst the ordinance, by which they were enjoined continues, yet may be and generally are changed and revoked according to the exigency of circumstances. The use of these things, though of their own nature indifferent was here prohibited to bring the Jews more easily to admit of the society of the Gentiles, and to exercise the latter in obedience. But this prohibition

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CHAP. V.

Decree of this  
first council  
inspired by  
the Holy  
Ghost.



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hibition was but temporary and has long since ceased to oblige. "It hath seemed good to the Holy Ghost and to us" is a formal exclusion of the interference and control of the *civil* magistrate over the decrees of a council or convocation of church governors, convened upon matter of belief and spiritual discipline. The conclusion applies itself.



## C H A P. VI.

## OF THE KING'S SUPREMACY OVER THE CHURCH OF ENGLAND.

*Nature of the Office of the Supreme Head of the Church of Christ.*

*Disputable Opinions of Divines upon the indirect Power of Christ over Temporals. English Roman Catholics bound by their Oath to the Negative. First Cause of Henry VIII. withdrawing himself from the Papal Supremacy. Præmunire of the Clergy. The Difference between the Protestants' and Roman Catholics' Belief of the Necessity of an Universal Bishop. Confirmation of Bishops by the Popes. Submission of the Clergy. Canon Law how far binding. The Acts of Henry VIII. suppose spiritual Jurisdiction not to be in the Crown. Act of Convocation declaring the King Supreme Head. Power of Visitation. Declaration of the Clergy upon the Nature of spiritual Power. Ecclesiastical Commissioners. Oath of Supremacy differs from the Act. Sir Thomas More. The King in no Sense supreme independently of Parliament. Roman Catholic Doctrine of Supremacy. Unlawful for Roman Catholics to swear to the Supremacy. Acts of Edward VI. usurping all spiritual Power. Shameful Surrender of Bishopricks into the King's Hands. Act of Mary settled all Rights to Church Property. Elizabeth's Oath of Supremacy. Legislative Interpretation thereof.*

IN order fully and completely to ascertain the civil establishment  
of the Episcopalian Protestant religion of the church of England

BOOK

CHAP. V.



BOOK III. in all its effects and consequences according to the present sub-  
 CHAP. VI. sisting laws of the State, we must enquire fairly into the source  
 How to find nature and consequences of the ecclesiastical supremacy of the  
 out the na- king of England.  
 ture of the  
 supremacy.

Delicacy of  
 the investiga-  
 tion.

Having in the 10th chapter of my *Jura Anglorum* said upon this subject what seems grievously to have wounded the feelings of my Reverend Correspondent, I shall enlarge somewhat upon it; endeavouring to avoid pleonasm and repetition on one hand, and on the other to leave no point untouched, which may tend to disclose the real nature of the supremacy of our sovereign over the church of England, such as in reality it exists by law at this hour. The subject contains so much inflammable gas, that I scarcely know the spirit, that can approach it without the most imminent risk of an explosion. To steer clear of offence and displeasure amidst the many jarring opinions upon this tender topic is my ardent wish, though but a slender expectation. I confide however that an unbiassed and unclouded exposition of facts will by developing the truth tend to allay in some degree the ferment of the medium, through which it is but too often seen. My efforts are encouraged and directed by that maxim of St. Thomas of Aquin, "*Ob nullum scandalum relinquenda est veritatis defensio.*"

The first step towards rightly comprehending the nature of the king's supremacy, as he possesses it by the constitution and laws



laws of this country, is to acquire just and comprehensive ideas of the office duty right power and authority of the chief governor of a Christian church : and then to ascertain the office duty right power and authority of the king of England with reference to the church of England or in quality of supreme head of that church ; we shall thus see how far they be separate and distinct, confused or identified, consistent or repugnant to each other. Father Parsons has given us a very full unequivocal and explicit statement of the former : \* “ The office of high priesthood, as  
 “ partly hath appeared by that we have said, and is evident by  
 “ the discourse of *St. Paul*, appointing him for a meanes or mediator  
 “ diator betweene God and man, consisteth principally in two  
 “ thinges or partes: first in respect of that, which he is to performe  
 “ towards God, as to his superiour : secondly in the functions,  
 “ that he is to use towards the people, as inferiours and sub-  
 “ jectes. The first consisteth in offering sacrifice, oblations,  
 “ prayers and intercession for the sinnes of the people, as already  
 “ touching Christ our Saviour out of the apostle we haue declared.  
 “ The second consisteth in the spirituall power dignity  
 “ authority and functions thereof, which our said high priest  
 “ Christ Jesus, as head and high priest of his church, purchased  
 “ with the sacrifice of his owne bloud, hath, and may exercise

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What is a  
real *spiritual*  
head of the  
church, ac-  
cording to  
Parsons.

\* A Treatise tending to Mitigation towards Catholyke Subjects in England against the seditious Writings of Thomas Moreton Minister, by P. R. 1607, p. 154, written by Father Parsons. Vid. Dodd's History of the Church of England, 2d vol. p. 406.



BOOK III. " vpon the said church for euer, for vnto him as our high priest  
 CHAP. VI. " it appertaineth not only to make intercession for his said church,  
 " but to gouerne the same also, and to direct it by conuenient  
 " meanes vnto the end of their saluation, which he hath designed,  
 " and for this to make lawes, prescribe orders, appointe sacra-  
 " ments, ordaine spirituall tribunals of judgment, giue sentence  
 " of separation of the good from the bad, forgiue and retaine  
 " sinnes; which spirituall gouernment of soules belonging to the  
 " office of high priesthood, is a different thing from the ciuill  
 " gouernment of temporall principality, and yet is a kingdome  
 " also in itself, but a spirituall kingdome ouer soules and not ouer  
 " bodies. And this had Christ our Saviour togeather with his  
 " high priesthood, according to the prediction and vision of  
 " *Daniel: Aspiciebam et ecce quasi filius hominis &c.* I did looke  
 " and behold there appeared as it were the sonne of man, and  
 " God gaue vnto him power and honour, and a kingdome, his  
 " power is an eternall power, and his kingdome shall neuer be  
 " corrupted."

Whether the  
 church pos-  
 sesses temporal  
 power.

This same author, who pushes the temporal power of the  
 Pope and Church further than most others, tells us in the next  
 page, that " whether besides this spirituall and royall government  
 " of our souls, Christ had kyngly dominion also over our bodies  
 " and goodes and upon all the kingdoms, so as he might iustly  
 " have exercised all actions of temporal iurisdiction &c. In this  
 " and other pointes depending hereof there are two disputable  
 " opinions



“opinions betweene Catholyke devines.” A Roman Catholic BOOK III.  
CHAP. VI. may therefore hold either of the disputable opinions without forfeiting his faith: but this divine continues, (p. 156) “with  
“this second *opinion*, which is the more general doe concur  
“also the Protestantes of our age, that Christ took upon him  
“no temporall kyngly power in this life, least if they held the  
“contrary, it should be inferred thereof, that he left the same au-  
“thority both of temporal and *spiritual* unto St. Peter his successor:  
“which yet the Catholickes doe explicate otherwise, saying: that  
“albeit Christ had no direct dominion in this life upon tempo-  
“rall thinges, yet indirectly for preservation of his spirituall do-  
“minion he had and might have used the same and in that sense  
“he left it to his said successor.” There can be no question,  
but that our blessed Lord *as God*, had both *spiritual* and *temporal*  
power over all things: but it is truly a singular assertion, that as  
the head and founder of his spiritual kingdom, which he says *is*  
*not of this world*, he should want an indirect dominion over tem-  
poral things in this life for the preservation of his *spiritual do-*  
*minion*: the preservation of which (*i. e.* the indefectibility of  
his church) rests solely upon his divine promises, not upon tem-  
poral power or means either direct or indirect: it is however  
allowed by this divine, that Christ never did in fact use this indi-  
rect temporal power.

The apostles and their successors, it must be allowed could  
acquire no powers, which their divine Master had not possessed



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Christ never  
exercised any  
temporal  
power.

and granted to them: and it is evident, that he took upon himself no direct temporal power, nor did he ever even *indirectly* exercise any such, to justify by his example the same in his apostles and their successors. Such of the body of English Roman Catholics as have taken the late oath, are no longer at liberty to take up indifferently either alternative of this disputable question: they have upon oath renounced both the *direct* and *indirect temporal power* in the church councils or popes over the subjects of this realm. Upon this point they are therefore sworn to agree with their protestant brethren, and to differ from Parsons and all other divines, who maintain his doctrine.

Fair discrimination between the *spiritual* and *civil* power.

I am happy in my progress to profit of a very spirited and laudable declaration of an author as little to be suspected of relaxing the powers of the church or popes as Father Parsons himself: \* “To obviate any injurious imputation, we here loudly declare, that we firmly admit the entire and absolute independence of sovereign and civil power as an incontestable and indisputable truth, which wants not the protection of the church to ensure it, and is not subject to the disputes of theologians, to the examination of bishops or to *the confirmation*

\* Considerations on the Modern Opinion of the Fallibility of the Holy See, p. 19. 1790.—Viz. because the nature and extent of the *civil* magistrate's authority is not an object of the *spiritual* power, and being no part of the Christian revelation cannot be the subject of a declaratory act of the church of Christ.



“*tion of general councils.* The exercise of spiritual power in  
 “determining matters of faith is a prerogative of an order quite  
 “distinct from secular authority: the boundaries of each are  
 “sufficiently ascertained, and nothing but malice or ignorance  
 “will confound them.” The grand and indeed sole object of my  
 present investigation is, whether the existing laws of this country  
 do or do not give or pretend to give any other than *secular*  
 (or *civil* and *temporal*) authority to our king, in declaring him  
 supreme head of the church of England.

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 CHAP. VI.

As the supremacy of the king of England rests at present  
 upon statute law, and is thereby made the ground of an oath,  
 for the refusal of which some millions of British subjects are ex-  
 cluded from all active and passive representation in parliament,  
 which is the fundamental and most valuable right of the British  
 constitution, it will be readily admitted to be the immediate pro-  
 vince of a lawyer to comment upon the statutes and the oaths  
 required by the statutes, which operate this cruel exclusion of so  
 many British subjects from the first fundamental right of their  
 constitution.

Of the effects  
 of the oath  
 of supremacy.

The learned Grotius says, \* that the interpretation of the  
 force and obligation of an oath, by which citizens are bounden

\* Votum pro Pace, p. 63.



BOOK III. to civil magistrates belongs to statesmen and lawyers and not to  
 CHAP. VI. divines. *Tum vero super vi jurisjurandi, quo cives magistratibus*

Interpreta-  
 tion of oaths  
 used as civil  
 tests, belongs  
 to lawyers.

*obligantur, interpretationem politicorum & jurisconsultorum esse ar-  
 bitror non theologorum.* This opinion is emphatically conge-  
 nial with our constitution, under which the opinion of the  
 judges settles the law. An English lawyer therefore in forming  
 his opinion upon such a point should follow what Lord Hard-  
 wicke said, \* “ were the sure foundations to proceed upon, viz.  
 “ the general nature and fundamental principles of our consti-  
 “ tution, acts of parliament and resolutions and judicial opinions  
 “ in our books, and from these to draw our conclusions.” The  
 unwarrantable acts of kings magistrates or private individuals,  
 the unfounded and misconceived prejudices of the public, or  
 even the studied and laboured doctrines of the learned will not  
 justify him in forming an opinion against the express words of  
 the statutes, unsupported by any legal decisions upon their ope-  
 ration.

King of Eng-  
 land has all  
 his power  
 from the  
 people.

I shall presume upon the universal assent of my readers to the  
 following positions, that a king of England possesses no other  
 power over any part of his subjects, than that, which is granted  
 to him by the constitution and laws of his country: that this  
 power therefore is consequently limited and controllable by  
 parliament: that parliament can only grant that species of civil

\* Strange's Rep. Middleton and Croft, Mich. 10 G. 2.



and *temporal* power, of which the supreme sovereignty is BOOK III.  
CHAP. VI. vested in them by the nation: that of such power they can for the good of the state give to others any portion short of the absolute supreme sovereignty itself: \* for that they cannot transfer nor dispose of. Hence flows a corollary, that any attempt or pretension of the *civil* power to grant or even to affect an object, which is not of its competence or ressort, is an absolute nullity.

I have endeavoured, and I hope, succeeded in shewing in my *Jura Anglorum*, that before the reformation a part of the *civil* establishment of religion in England, was by the consent of the nation permitted to be under the control and power of the Bishop of Rome, as is evident by the laws of the land allowing of appeals to Rome from the ecclesiastical court of the Archbishop of Canterbury in case of tythes presentations inductions immunities testamentary causes and generally of all those things, which fall under the cognizance of the ecclesiastical courts in England. Now from the principles already laid down, it necessarily follows, that there can be no part of the *civil* establish-

A part of the *civil* establishment of religion formerly under the Pope.

\* Thus truly says the philosophic citizen of Geneva (Soc. Cont. l. ii. c. i.)

“I say therefore, that the sovereignty being no more, than the exercise of the  
“general will can never alienate itself: and that the sovereign, which is only a  
“collective being cannot be represented but by itself. The power may be  
“transmitted, but not the will.”



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CHAP. VI.

ment of religion independent of and placed out of the control of that *civil* power, from which *ex confesso* it flows : for I call that only the *civil* establishment of religion, which the state grants, and which without the grant of the state could not be enjoyed.

How our ancestors acted in respect to Papal supremacy.

Our Roman Catholic ancestors, although they fully admitted the primacy of jurisdiction or spiritual authority of the see of Rome, yet they frequently passed acts to prohibit that see from exercising the power and control over the civil establishment of religion, in as full and ample a manner as it had been formerly accustomed to do : holding themselves very justly intitled to prevent any applications to Rome \* “ whereby prejudice “ damage.

\* 23 Edw. III. stat. 2. One of the greatest mischiefs that follows the inconsiderate heat of party writers, whether on religion or any other matter, is the error, which posterity falls into by giving almost unlimited credit to authors of their own side of the question for every thing they advance in support of it. Thus has it happened with reference to Roman Catholic writers upon papal authority. When the nation threw off their submission to the spiritual supremacy of the chief pastor, the advocates and supporters of the necessity of one chief head of the hierarchy in their zealous efforts to uphold it, too easily adopted a stile of invective and condemnation in speaking of any attempts against any claims of the Roman pontiff. We find them almost as vehement in supporting his Holiness's title to Peter pence and annates, which the nation conceded to him for a long series of years, as to his primacy of honour and jurisdiction, which they all attribute to him independently of the *civil* or *temporal* power, whether



“ damage or impeachment hath been or may be done hereafter  
 “ to him (the king) or to his said subjects in persons heritages  
 “ possessions rights or any goods, or to the laws usages customs  
 “ franchises

BOOK III.  
 CHAP. VI.

whether he receive it by *divine* according to some, or by *positive ecclesiastical* institution according to others. From Father Parsons's answer to Coke and from the general stream of writers upon this subject, a Roman Catholic reader, who admits of one chief or head of the hierarchy will naturally think the schism of Henry VIII. the first serious attempt against or resistance to the claims of the Roman Pontiff from this nation. I have endeavoured to shew the contrary in the fourth chapter of this book: but I only there spoke of the laws, which they passed, not of their grounds or motives for enacting them. Most Roman Catholics in this country from habit and education never hear a word said of papal encroachments and usurpations, but they lay it to the score of that spirit of innovation or reform in religion, which they feel it their duty to resist and discountenance. We must therefore go to higher authority, than that of any writer upon these subjects since the reformation. Let us listen to Roman Catholic Englishmen, who knew nothing of religious reformation or separation from the communion of their mother church: they spoke as they felt, and acted as they spoke. Their words are recorded, and are out of the reach of misrepresentation or alteration by subsequent commentators. The former usage of this nation was for the commons to state their grievances to the king in parliament, and when the representatives of the people were somewhat more attentive to the interest of their constituents, than they have since been, these complaints, which are still to be seen in the records of the Tower of London, will bespeak the real feelings of the people of England at the time, at which they lodged their complaints through their representatives. Upon this subject then in the 50th year of king Edward III. (A. D. 1376), we find a long list of complaints, which I shall copy from Sir R. Cotton's Abridgment of the



BOOK III. "franchises and liberties of the said realm and of his crown," &c.  
 CHAP. VI. All these are, properly speaking *civil* effects, and consequently cannot be produced by that *spiritual* power, which was given by Christ

Records of the Tower (p. 128) which will shew, that the different acts upon this subject were not passed without strong reason and urgent necessity.

85. "A long bill against the usurpations of the Pope, as being the cause of all the plagues, injuries, famine and poverty of the realm, so as thereby was not left the third person, or other commodity within the realm, as lately was.

86. "That the tax paid to the Pope for ecclesiastical dignities, doth amount to five times as much as the tax of all the profits as appertain to the King by the year of this whole realm; and for some one bishopric or other dignity, the Pope by way of translation and death hath three, four, or five several taxes.

87. "That the brokers of that same city for money promote many caitiffs, being altogether unlearned and unworthy of a thousand marks living yearly, where the learned and worthy can hardly obtain twenty marks, whereby learning decayeth.

88. "That aliens, enemies to this land, who never saw nor care for to see their parishioners, have those livings, whereby they despise God's service, and convey away the treasure, and are worse than Jews or Saracens.

89. "To be considered, that the law of the church would have such livings to be bestowed for charity only, without praying or paying. That reason would that livings of devotion, should be bestowed in hospitality. That God had committed his sheep to the Pope to be pastured, and not shorne or shaven.

90. "That lay-patrons perceiving this simony and covetousness of the Pope, do thereby learn to sell their benefices to beasts, none otherwise than Christ  
 "was



Christ to his apostles. If the cause producing these effects have  
 ever been within the control of the *civil* magistrate, as it certainly

BOOK III.

CHAP. VI.

was

“ was sold to the Jews. That there is none so rich a prince in Christendom,  
 “ that hath the fourth part of so much treasure as the Pope hath out of this  
 “ realm for churches most sinfully.

91. “ A repetition of the honor of the church; and that all the plagues there  
 “ particularly named have justly fallen upon this realm for suffering the same  
 “ church thus to be defaced, with declaration that it will daily increase without  
 “ redrefs.

92. “ Persuasion to re-edifie the same; and the rather, for that this was the  
 “ year of jubilee, the fiftieth year of the king's reign, the year of joy and glad-  
 “ ness, than the which could be no greater.

93. “ The means how to begin this, was to write two letters to the Pope;  
 “ the one in Latine under the broad seal, the other in French under the  
 “ seals of the nobles, importing these particularities requiring redrefs.

94. “ And for a further redrefs and accomplishment, to enact, That no  
 “ money be carried forth of the realm by letter of Lombardy or otherwise, on  
 “ pain of forfeiture and imprisonment; and to enact the articles hereafter en-  
 “ suing.

Answ. “ The king hath hitherto by statute provided sufficient remedy, and  
 “ otherwise pursueth the same with the Holy Father the Pope, and so mindeth  
 “ to do from time to time, until he hath obtained as well for the matters before,  
 “ as for the articles ensuing, being in manner all one.

95. “ That the Pope's collector, and other strangers the king's enemies, and  
 “ only legier-spies for English dignities, and disclosing the secrets of the realm,  
 “ may be touched.

96. “ That the same collector being also receiver of the Pope's pence  
 “ keepeth a house in London, with clerks and officers thereto, as it were one

“ of



## BOOK III.

## CHAP. VI.

was supposed to be when our ancestors passed these and the like acts to check it, so must it for ever remain until that God, who instituted

“ of the King’s solemn courts, transporting yearly to the Pope twenty thousand  
“ marks, and most commonly more.

97. “ That cardinals and other aliens remaining at Rome, whereof one cardinal is a dean of *York*, another of *Salisbury*, another of *Lincoln*, another archdeacon of *Canterbury*, another archdeacon of *Durham*, another archdeacon of *Suffolk*, and another archdeacon of *York*, another prebendary of *Thame and Nassington*, another prebendary of *York* in the church of *York*, have divers  
“ other the best dignities in *England*, and have sent over yearly twenty thousand  
“ marks, over and above that which English brokers living there have.

98. “ That the Pope to ransom Frenchmen the king’s enemies, who defend  
“ *Lombardy* for him, doth always at his pleasure levy a subsidy of the holy clergy  
“ of *England*.

99. “ That the Pope for more gain maketh fundry translations of all the  
“ bishoprics and other dignities within the realm.

100. “ That the Pope’s collector hath this year taken to his use the first  
“ fruit of all benefices.

101. “ To renew all the statutes against provisors from *Rome*, sith the  
“ Pope reserveth all the benefices in the world for his own proper gift, and hath  
“ this year created twelve new cardinals; so now there are thirty, where wonted  
“ to be but twelve, and all those cardinals except two or three are the King’s  
“ enemies.

102. “ That the Pope in time will give the temporal manors of those dignities to the King’s enemies, since he daily so usurpeth on the realm, and the  
“ King’s regality.

103. “ That all houses and corporations of religion who unto the King’s  
“ reign now had freely election of their heads, the Pope hath accroached the  
“ same to himself.

104. “ That



instituted the office of the *civil* magistrate, shall choose to alter it by diminishing or multiplying the objects of *civil* power. BOOK III.  
CHAP. VI.

But in order to form our opinion upon the nature and effects of that supremacy, which the existing laws of the country now admit in the first executive magistrate of our constitution, and which every British subject may be required to swear to, before he can be even represented in parliament, we must fix our attention to the commencement of the reformation, when Henry VIII. first assumed and added to the dignities of our

104. "That in all legacies from the Pope whatsoever, the English clergy beareth the charge of the legacies, and all for the goodness of our money.

105. "That also it appeareth, that if the money of the realm were as plenteous as ever it was, the collectors aforesaid, with the proctors of cardinals, would soon convey the same.

106. "For remedy whereof it may be provided, that no such collector or proctor do remain in *England*, upon pain of life and member: and that no Englishman on the like pain become any such collector or proctor, or remain at *Rome*.

107. "For better information hereof, and namely touching the Pope's collector, for that the whole clergy being obedient to him, dare not him displease, it were good that Sir John Strenfall parson of *St. Botolph's* in *Holborn* may be sent for to come before the Lords and Commons of this parliament, who being straitly charged can declare much more, for that he served the same collector in house five years."

It is to be remembered that the complaints of these grievances were made by Roman Catholics, about 160 years before the reformation, when neither heresy nor schism was imputed to them.

sovereign



BOOK III. sovereign the new awful and since much contested title of *supreme head of the church of England*\*.

CHAP. VI.

King Henry's  
inducement  
to throw off  
his obedience  
to the see of  
Rome.

It would throw but little light upon the subject of our investigation to detail the motives, which induced king Henry, who had himself written a very strong defence of the pope's supremacy against Martin Luther to withdraw himself and his kingdom from their obedience to the see of Rome. The king despairing of success in his suit at the court of Rome for procuring a divorce from Queen Catherine, with whom he had lived above twenty years and had issue, came to the short resolution of abolishing the whole power of the pope within his kingdom. The first and immediate effect, which he had in view from this abolition was to procure from his own subjects what he could not from the bishop of Rome; viz. the dissolution of his marriage with Queen Catherine. Henry, who never to his dying day renounced any other tenet of the Roman Catholic belief, but that of the necessity of a visible spiritual head of the church, and a centre of Catholic unity, believed as every Roman Catholic still does, that in as much as matrimony is a sacrament, the sacramental validity of it is a subject of pure spi-

\* As I argue in this treatise, (which is properly supplemental to my *Jura Anglorum*) by reference to that work I must beg leave to recommend to my reader the 10th chapter of that, before he peruses this part of the present work.



ritual cognizance. \* As far therefore, as any question concern-  
ing matrimony affects the validity of the sacrament, or the con-  
scientious obligation or the sinful or lawful cohabitation of the  
contracting parties, it falls in the principles of Roman Catholics  
solely and exclusively under the pure spiritual jurisdiction of  
Christ's church; and in this sense did the council of Trent de-  
nounce anathema against those, who should hold, that matri-  
monial causes do not belong to the church. *Si quis dixerit causas  
matrimoniales ad ecclesiam non pertinere anathema sit.* It would not  
therefore have answered Henry's purpose to procure the abridg-  
ment or even the total annihilation of the pope's headship or  
supremacy over any part or the whole of the *civil* establishment  
of religion, as might lawfully have been done, and had fre-  
quently in part been done by his predecessors, as we have seen:  
but this question being clearly and evidently cognizable by  
such only, in whom according to the national belief of that day  
the supreme sovereignty of *real spiritual* power existed, it be-  
came necessary for the king to obtain his ends to place or pre-  
tend to place it elsewhere, than where he himself and his whole  
nation till then believed and maintained it to exist.

\* The dispute about the necessity of a clergyman's administering this sacra-  
ment will not alter my statement of the case: for no Christian denies baptism  
to be a sacrament of the new law: and yet most Christians hold, that it may be  
administered by any lay man or woman: but they do not on this account hold  
the *civil* power competent to decide upon the validity of that sacrament *v. g.*  
whether it can be administered by a heathen, or heretic, without intention or  
contrary to the intention of the minister, &c. &c.



## BOOK III.

## CHAP. VI.

How Henry  
treated his  
clergy.

Cardinal  
Wolsey  
made the  
Pope's legate.

Præmunire of  
the clergy.

In a matter of such importance and delicacy the king proceeded both artfully and captiously. His grand difficulty was to render his clergy pliant and submissive to his views, and to effect it, he pursued the following measures. Amongst the many ecclesiastical dignities and preferments, with which the Cardinal Wolsey was loaded, the king had lately procured for him a legatine power from the Pope. As he was declared and accepted by the king as *legatus a latere*, it was natural to suppose under these circumstances, that the English clergy would readily acknowledge, as in fact they did, this legatine power of the Cardinal. On this account \* “in the year 1530 (22 H. VIII.) “the clergy being caught in a præmunire were willing to re- “deem their danger by a sum of money: and to that end the “clergy of the province of Canterbury bestowed upon the king “the sum of 100,000l. to be paid by equal portions in the next “year following: but the king would not be satisfied unless they “would acknowledge him for the supreme head on earth of the “church of England.” This properly speaking was the preparatory act for throwing off the supremacy of the Bishop of Rome: and it is of great consequence to attend closely to it. The persons, who were called upon to make this declaration then professed the Roman Catholic religion, and consequently believed in the necessity of an universal bishop as the head of the church enjoying not only a primacy of dignity but also of ju-

\* Heylin, *Κεῖμηλια Ἐκκλησιαστικά*, p. 5.



jurisdiction over the universal church of Christ. This title and dignity of *supreme head of the church*, which the king now claimed was altogether new to them: and although from several of the old acts of parliament, and from reason they could clearly distinguish between the *civil establishment* of religion, which proceeded from the state, and the supremacy of spiritual power and church government, which proceeded from God; yet it appears, that they never intended to go beyond what their faith and consequently their consciences permitted. Therefore continues this respectable historian, "Though it was hard meat and would not easily go down amongst them, yet it passed at last." But how did it pass? Not generally and unequivocally: but under a reserve and evidently with immediate reference to and exception of that sense, which the law of Christ would not permit them in their principles to admit of a layman to be supreme. "Cujus ecclesiæ (scil. Anglicanæ) singularem protectorem unicum & supremum dominum (quantum per Christi leges licet) supremum caput ipsius, majestatem recognoscimus." This reservation of (*as far as by Christ's laws we may*) most undeniably proves, that in their opinions, there was a sense, in which the king by Christ's laws could not be acknowledged supreme head of the church: and in as much as no human legislature can counteract or abolish the laws of Christ, therefore by their express declaration they presumed, that they left untouched that primacy of *spiritual* jurisdiction, which they believed to have been given by Christ to St. Peter and to have been perpetuated

BOOK III.  
CHAP. VI.  
Declaration  
of the clergy.

Their quali-  
fying reserve.



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through his successors in the see of Rome. An acknowledgment of a power in another, *as far as God permits*, keeps a person clearly within the intention at least of acknowledging or allowing to him no unlawful or unwarrantable power against the law of God.

Declaration  
of the pro-  
vince of York.

The views of King Henry in demanding, and of the clergy in making this acknowledgment were widely different: neither of them affect that supremacy, which by law now does, or is supposed to exist in the king of Great Britain, which is the object of my research. "To this," continues Heylin, "they all consented and subscribed their hands and afterwards incorporated it into the public act or instrument, which was presented to the king in the name of his clergy, for the redeeming of their error, and the grant of their money." The province of York had not so readily come into this acknowledgment as that of Canterbury: they offered only 18,840*l.* to ransom their pardon, for which however it was granted. It appears that the king was particularly anxious to procure the acknowledgment of his new title from the convocation of York: and in writing to them to solve their scruples about the terms *supreme head of the church* he tells them \* "that words were not always to be understood in their strict sense, but according to their common acceptance. And amongst other things he

\* Burnet's History of the Reformation, l. ii. p. 112.



“ shewed, what an explanation was made in the convocation of BOOK III.  
 “ Canterbury, that it was in so far as was agreeable to the laws CHAP. VI.  
 “ of Christ.” A decisive proof, that the sense and intention of  
 this reserving clause, was to confine the declaration of the clergy  
 to the headship of the civil establishment of religion and not to  
 extend it to the *spiritual* jurisdiction of church government,  
 which being formed by divine institution, could be altered by no  
 human laws. Little would it avail me to consider, whether the  
 body of English clergy in the year 1532 acted with full and sin-  
 cere conviction in acknowledging King Henry *supreme head* of  
 the church of England in the terms, in which that acknowledg-  
 ment was expressed, if this acknowledgment had not formed  
 the basis of the act of the clergy’s submission to the king, and  
 that act of submission had not been engrafted in the statute  
 for abolishing the pope’s supremacy within this kingdom, which  
 is a law at this day operating upon this nation in full force and  
 efficacy.

The operation of this and other subsequent acts of parliament  
 upon this subject must be impartially and fully considered, in  
 order to form a legal and constitutional opinion upon the king’s  
 supremacy. It is to be presumed, that the members of the  
 established church must be equally, if not more interested than  
 any other persons in the investigation of this subject, were it  
 only to clear away the objection so frequently and so forcibly  
 pressed upon them by their adversaries, as Heylin, who wrote to

Objections  
 against the  
 established  
 church how  
 to be viewed.



BOOK III. refute it, expresses it, \* "Their religion is mere parliamentarian:

CHAP. VI. "a parliament religion, a parliament faith and a parliament  
"gospel: parliament bishops, and a parliament clergy." That

Difference of  
a Protestant  
and Catholic  
about church  
authority.

there is a very essential difference between the church of England since the reformation and the Roman Catholic church with reference to *church authority* is certain and undeniable: the grounds and reasons of this difference appear from the substance of the numerous books of controversy upon it; many of which have tended to thicken rather than dispel the mist, in which the real points of difference are enveloped. A Roman Catholic differs not from a Protestant of the established church in his belief of the source or nature of *spiritual* power: a Protestant does not believe any more than a Roman Catholic, that the parliament or the king has succeeded to or can possess any part of that power or jurisdiction, which Christ left to his Apostles and their successors for the government of his church: but the Roman Catholic differs from the Protestant only in maintaining the necessity of one universal primate or chief over the whole church, as they believe a primacy of dignity and jurisdiction to have been vested by our blessed Lord in St. Peter over the rest of the Apostles and all the Faithful. Whereas the Protestant holds, that the same authority, the same mission and the same powers were given equally to each Apostle, and have by the same means of *spiritual generation* been con-

\* Heylin *Κειμήλια Εκκλησιαστικά*, p. 1.

tinued



tinued through their successors to the present hour: but he BOOK III.  
CHAP. VI. does not believe, that any primacy was granted to St. Peter above the rest: and therefore he denies any such to his successor in the see of Rome.

From the year 1521, in which king Henry wrote his book in defence of the Pope's supremacy, "he continued," says Parsons \*, "so devout and obedient to the see of Rome as no king in Christendom more." But after he had taken his resolution of marrying Ann Bullen and he found unsurmountable difficulties from the see of Rome in procuring a divorce from his lawful wife Queen Catharine of Arragon, many reasons and inducements may be conceived, why he should change his opinion and conduct towards that see. The change however was gradual: His suit for the divorce was opened in the month of April 1529, when his Majesty and the Queen were cited and personally appeared in the church of the Black Friars in London before the Cardinals Wolsey and Campegio, who were deputed legates by Pope Clement VII. to hear and judge this matter. Even three years after this suit had been pending, and the violent temper of Henry must have been greatly thwarted by delay, and incensed by disappointment, yet he still remained firm to his old belief in the primacy of *spiritual* dignity and jurisdiction of the Bishop of Rome, as appears by an act passed in the 23d year of his reign,

Progress of  
Henry's de-  
fection from  
the Pope's  
supremacy.

\* Answer to Sir E. Coke, p. 345.



BOOK III. A. D. 1532 for restraining the payment of *annates* to the  
 CHAP. VI. bishop of Rome\*. In the preamble there is a heavy com-  
 plaint against the grievance of paying these annates or first  
 fruits, for expediting the bulls of confirmation to archbishops and  
 bishops and upon their promotions to their sees: in so much,  
 as that they had exceeded 160,000*l.* from the second year of  
 Hen. VII. to that time.

Act against  
 payment of  
 annates be-  
 fore the re-  
 jection of the  
 supremacy.

Bulls of con-  
 firmation.

These bulls of confirmation were, as I before observed the  
 acts, by which in Roman Catholic times the *spiritual jurisdiction*  
 was conferred upon the bishop elect by the supreme head of the  
 hierarchy. The payment of these annates was a matter extrinsic  
 to the act collating the spiritual jurisdiction, and clearly within  
 the competence of the civil legislature to regulate: as it would be,  
 if a bishop were to demand a year's income of every living, to  
 which he might institute a clerk †. This very act however,  
 which rendered the payment of the *annates* unlawful, confirmed  
 the usage of the confirmation of the bishops by the Pope by pro-  
 viding a new mode and rate of paying for their confirmation: it  
 being thereby enacted, "That every spiritual person of this

\* This act is not printed amongst the statutes of this year: but it is pub-  
 lished from the record in Burnet's Collection No. 41: and it is recited in the  
 preamble of 25 Hen. VIII. c. 20.

† This actually was till the late dispersion of the Gallican church, the custom  
 in all the dioceses of Normandy.



“ realm hereafter to be named presented or postulated to any BOOK III.  
 “ archbishoprick or bishoprick of this realm shall and may CHAP. VI.  
 “ lawfully pay for the writing and obtaining of his or their said  
 “ bulls at the court of Rome and enfealing his name with lead  
 “ to be had without payment of any annates or first fruits or  
 “ other charge or exaction by him or them to be made yelden  
 “ or paid for the same five pounds sterling &c. upon the net  
 “ yearly revenue of the bishoprick.”

The King having sued in vain for his divorce for four years at Marriage  
with Ann  
Bullen.  
 the court of Rome, cut the Gordian knot and married Ann  
 Bullen in the 24th year of his reign A. D. 1533 and in the same  
 year an act of parliament was passed for restraining and prohi- Appeals to  
Rome taken  
away.  
 biting all appeals to Rome. The king's views and motives for  
 procuring this act to pass were very obvious: but it must be re-  
 marked, that it did not affect to bring the objects of the act,  
 amongst which were *causes of matrimony and divorce* under the  
 cognizance of the *civil* and *temporal* power, but as Father Parsons  
 rightly observes \* “ he prohibited all appeals in causes ecclesiasti-  
 “ cal to the court of Rome, reducing all spiritual authority of  
 “ determining the same unto the body spiritual of the English  
 “ clergy, for so the words of the statute are: the body spiritual  
 “ of the English church having power, when any cause of the

\* Anf. to Sir E. Coke, p. 347.



BOOK III. "law divine happened to come in question, or of spiritual learn-  
 CHAP. VI. "ing &c, to declare and determine all such doubts and to admi-  
 "nister all such offices and duties, as to their rooms *spiritual* did  
 "appertain, without the intermeddling of any exterior person  
 "or persons &c. whereby it appeareth that by this statute he re-  
 "duceth all spiritual power to a certain community of the eccle-  
 "siastical body of England &c. By the same statute, it was also  
 "further enacted, that all such the causes mentioned in the act  
 "should be definitively and finally determined by the archbishop  
 "of the province without any other or further process or appeal  
 "thereupon to be had or sued."

Act of sub-  
 mission of the  
 clergy.

The clergy of both provinces having met in convocation made  
 their act of submission to the king, and promised *in verbo sacerdo-*  
*tis*, "that they never would from thenceforth presume to attempt  
 "alledge claim or put in ure enact promulge or execute any new  
 "canons constitutions ordinancies provincial or other by what-  
 "soever other name they shall be called in the convocation  
 "unless the king's most royal assent may to them be had to  
 "make promulge and execute the same, and that his majesty do  
 "give his most royal assent and authority in that behalf." This  
 act of submission was engrafted in the 25th Hen. VIII. c. xix. by  
 which act the King's power was very greatly enlarged as to eccle-  
 siastical matters: for he was empowered according to the petition  
 of the clergy to appoint thirty-two commissioners to examine

Ecclesiastical  
 commission-  
 ers.

which



which canons should be abrogated, and which confirmed: and an appeal, which by the act of the last session went no further than the metropolitan was now given to the king in chancery by commissioners to be appointed under the great seal, whose sentence was to be definitive.

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CHAP. VI.

Appeal to  
King's dele-  
gates.

This nomination by the king of parliamentary commissioners to alter the canons and the appeal to the king from the archbishop in ecclesiastical causes certainly at first appear to suppose the supremacy of *spiritual* jurisdiction and power to be vested in the king. But we must keep an attentive and steady eye upon the objects, that this power or jurisdiction could affect. We shall find, that none of the causes, in which the appeal is given to the king, concern any thing more, than what constitute the *civil establishment* of religion: testamentary causes, tythes, oblations and obventions we have endeavoured to prove to be supereminently such.

Causes of matrimony are of such indefinite variety and of such peculiar delicacy, that it is difficult to speak of them without giving some displeasure or offence. It must be admitted by all Roman Catholics, that some matrimonial causes are of pure spiritual cognizance: but it is also clear, that by far the greatest number of such causes being *civil*, are out of the competence or resort of the *spiritual* or *ecclesiastical* power. The *natural* contract, which renders in heathens and unbelievers the intercourse of the sexes

Matrimonial  
causes, under  
whose cogni-  
zance.



## BOOK III.

## CHAP. VI.

lawful between the contracting parties for life, which before their contract would have been sinful, and the natural and social reciprocal duties of parents and children towards each other, with all the proximate and remote effects of legitimacy cannot be separated from the marriages of Christians, which according to Roman Catholic belief are dignified and sanctified by the blessing and grace of a sacrament of the new law. Every one must therefore see, how few causes can be instituted about matrimony, that will not be in their nature *civil*. Although the Christian church superadd the sanctifying grace of a sacrament to the natural contract of marriage, it does not do it away, or absorb it in the sacrament, as seems to be the idea of all those divines, who speak of its being raised to the dignity of a sacrament; for in treating of Christian marriage many of them appear to drop the idea of its being a natural contract, and they view it only in the light of a sacramental ordinance, or institution. It is certain, that the free tradition of each other's bodies for life between male and female of competent discretion constitutes an indissoluble natural union of the contracting parties. Man by entering into society does not lose, but improves his *natural* rights: and therefore all such rights, as are capable of regulation and control, become in society subject and liable to the *civil* or *temporal* power or authority, which supports and controls the different communities, into which society is divided. The natural right of contracting marriage, which was instituted for the preservation of social order and harmony, becomes regulated by the civil or municipal laws

Matrimonial  
contract.

of



of every community. Cohabitation of one man with one woman without marriage is lawful in no community or state. The form manner time requisites and conditions for making this contract public certain and binding were left by the general ordinance of God to the discretion of the *civil* magistrate in each community. So in like manner, when God imposed the commandment upon all mankind, *Thou shalt not steal*, he still left it, as I have before observed, to each state to make the thing property, and to vest or appropriate it to particular individuals. The natural contract then of marriage is in all these things liable and subject to the control of the state, which consequently regulates legitimacy and affixes to it all the consequences, which are still variable and mutable in every different state. But our blessed Redeemer in the new law superadded to the natural contract a special sacramental blessing or grace, which he generally required all his followers to procure, which being in its nature a mere *spiritual* effect can only be produced by or proceed from the power of the church. It is then generally true, that such matrimonial causes only fall under the cognizance of the *spiritual* or *ecclesiastical* power, as relate to the application of the sacramental blessing or grace to the natural contract. It will therefore belong exclusively to the church to fix and determine, at what age or times, to what parties, with what publicity and solemnity and under what conditions the sacrament may or shall be conferred upon the contracting parties. With deference therefore to the better opinion of divines and under full correction I presume, that the church.



BOOK III. church has made the conformity with the respective laws of the  
 CHAP. VI. state, in which the parties contract the general previous condition for applying or conferring the sacramental blessing or grace. If this be the fact, then by the positive *spiritual* or *ecclesiastical* law, which binds all Christians, no parties having contracted marriage against the injunctions or requisitions of the civil or municipal laws of the state, can receive the sacramental blessing or grace of the Christian church. \* But in as much as the rights of nature supersede all positive institutions and laws both *civil* and *ecclesiastical*, though in society they be amenable to the control of social civil power, I presume, that even a Christian man and woman of competent discretion finding themselves in a part of the globe subjected to no municipal laws and being out of the reach of any church or clergyman, might lawfully contract marriage without any other form or ceremony, than that of expressing their mutual consent. I cannot forbear attributing many erroneous opinions upon the subject of matrimony on one hand to the overstretched zeal and rigor of those divines, who cease to view matrimony in the light of a *civil* contract, but only as a sacrament of the new law; and on the other hand to the in-

\* Upon this principle a question is simply resolved, that affected a late much spoken of connection in very high life in this country. The natural contract could not be entered into by the parties in defiance of the marriage act, which is a positive civil law of this community: and the sacrament could not be conferred on those parties, who had not contracted marriage according to the laws of their country.

attention



attention of other divines, who view marriage amongst Christians in no other view than that of a *civil* contract, as if our blessed Lord in the law of grace had superadded no other blessing to Christian marriage, more than what was annexed by God's general ordinance to the natural contract amongst heathens. Whenever marriage is viewed in this two-fold light, little doubt will exist, whether a cause instituted concerning it be in its nature *civil* or *spiritual*.

BOOK III.  
CHAP. VI.

As to the examination of the canon laws by the commissioners, the act expressly mentions, such only to be the objects of their powers, as be "prejudicial to the king's prerogative royal" and repugnant to the laws and statutes of this realm: but also "over much onerous to his highness and his subjects:" which words evidently import, that such canons only were intended to be examined and reformed as related to the *civil establishment* of religion, of which, as it proceeds from the state, the king may be declared by the state to be the first executive magistrate or the *supreme head*. And as canons upon *temporal* or *civil* subjects exceed the competency of the *spiritual* power, as I have often observed, they can of themselves have no validity, but by the consent, confirmation or concurrence of the *civil* magistrate.

Examination  
of the canons.

I do not pretend to say, that several acts passed in the reign of this king do not contain words and phrases irreconcilable with truth. Nor do I deny that some things were attempted by the clergy and the legislature, which in my principles I must for

Unwarrantable attempts  
by the legislature in the  
reign of  
Henry VIII.

ever



BOOK III.

CHAP. VI.

ever think unwarrantable in the intent and impracticable in the effect ; and which I must therefore hold to be null and void, as exceeding the competence and resort of the *human* or *civil* power.

King Henry  
excommuni-  
cated by the  
Pope.

The king having married Ann Bullen in defiance of the prohibition of the Pope to be divorced from Queen Catherine, was formally excommunicated by the Pope. No wonder then, that his majesty should endeavour to crush as effectually as possible the whole *papal* power of every denomination within his realm. Henry himself, whatever his intention or wishes might be, could do no act without his parliament, which could alter the laws of the land. My enquiry therefore is, what alteration in those laws was intended to be made and in fact was made by the parliament. The immediate question then for discussion is this: Whether the parliament of that day did or did not undertake or attempt to vest in the king, or in one or more of the national clergy that *supreme spiritual* power, which had till then been acknowledged in the Roman pontiff, as the head of the hierarchy. The different acts, which were passed in the 25th year of Henry's reign (A. D. 1533), which is properly the first year of the reformation, affect a variety of subjects relative to the *civil* establishment of religion and the primacy of jurisdiction in the bishop of Rome. (C. xx.) Not only the payment of any annates or other composition to the court of Rome was prohibited, but the very presentation or application to the see of Rome for confirmation of any bishop

What the in-  
tention of the  
parliament as  
to the supre-  
macy.

or



or archbishop was forbidden. And by the new regulation, or BOOK III.  
CHAP. VI.  
 order of electing consecrating and confirming archbishops and  
 bishops \*, which is the law at this day, we find, that although  
 the *civil* right of presentation nomination or election be under  
 certain circumstances vested absolutely in the king, who may  
 appoint by letters patent, if the prior or convent or dean and  
 chapter refuse or neglect to elect; “ yet if any archbishop or  
 “ bishop within any of the king’s dominions after such election  
 “ nomination or presentation shall be signified unto them by the  
 “ king’s letters patent shall refuse and do not confirm invest and  
 “ consecrate with all due circumstance as is aforesaid &c. he  
 “ shall incur a præmunire.” Where a power controls a *civil* right,  
 the ultimate exercise of the power is properly reserved to him,  
 in whom it supereminently resides: and as the king is the su-  
 preme head of the *civil* establishment of religion, therefore is  
 the last and definitive right of presentation given to him. But  
 in respect to the collation of spiritual jurisdiction and the con-  
 stitution of a bishop or *church governor*, as this is an act, which  
 essentially affects the very quintessence of spiritual power and  
 the government of the church, over which the state can have  
 no authority nor control, the act pretends not to give to the  
 King in the last resort the exercise of the power of conferring  
 spiritual jurisdiction, though it inflict the severest penalties upon  
 others refusing or neglecting to do it, in whom the right of con-

\* Vide Jura Anglorum, p. 617.



BOOK III. ferring it is allowed to exist. By this law therefore the king  
 CHAP. VI. of England is presumed fully as incapable of conferring *spiritual jurisdiction* as *holy order*.

What alteration in the law was intended by Henry's parliament.

The alteration intended to be made in the common law of England by this statute was evidently this and this alone. That whereas until that time, a bishop elect was not a complete English bishop by common law, till he had been confirmed by the Pope, so from thenceforth, this confirmation by the Pope was no longer to be a necessary condition to make a person a *legal* bishop, but by statute law, this act of confirmation was directed to be made by English prelates instead of the Roman pontiff, in order to make a person a complete *legal* English bishop. Now whether the bishop of Rome have either by divine institution or by the general consent of the dispersed churches or by orders or decrees of councils or positive *ecclesiastical* law the exclusive right of confirming all bishops throughout the universal church, is a point of polemical discussion, which I avoid\*. The practice of each individual bespeaks his conviction: and it may suffice, that he be "always ready to give an answer to every man, that asketh us an account of the hope that is in us." (1 Pet. iii. v. 15.)

Act of Henry's parliament affecting only civil matters.

The next act which passed (C. xxi) was absolutely to pro-

\* At all events the manner form and conditions of conferring *spiritual jurisdiction*, as well as *holy order* are out of the resort of the civil power to regulate.

hibit



hibit the payment of all pensions censures Peter-pence procurations or other impositions to the court of Rome, which were matters clearly affecting the *civil* establishment of religion: and it also forbade any suit to Rome for licenses dispensations compositions faculties grants rescripts delegacies &c. to the see of Rome: and directed all such applications to be in future made either by the king or subjects to the archbishop of Canterbury: but that no new dispensations different from such as were wont to be obtained at the court of Rome should be granted without the licence of the king and council. This exception could not extend to any thing, but of a *civil* nature. Of this nature was the settlement of the first fruits and tenths of every ecclesiastical living upon the king. (26 H. VIII. c. xiii.) But attention was had to the *real spiritual* power in the act (c. xiv.) for nomination of suffragans and consecration of them: by which the king was enabled to choose one of the two, who should be presented to him by the archbishop or bishop, who wished to have such suffragans: and although it be said in the act, that the king shall give to the person of his choice, "such title name stile and dignity of bishop of such of the sees above specified as the king's highness shall think most convenient," yet it is not meant, that any thing more than the civil dignity or appendages should flow from the king: for the act proceeds to direct how the king shall present the suffragan elected and nominated to the archbishop, "to give him all such consecrations benedictions and ceremonies as to the degree

How the king  
named suf-  
fragans.



BOOK III. "and office of a bishop suffragan shall be requisite." And it is  
 CHAP. VI. further declared, that no suffragan shall have or execute any  
 jurisdiction or episcopal power or authority &c. but what shall  
 be given by their respective archbishop or bishop by commission  
 under their seals. Here is no attempt to draw *spiritual* jurisdic-  
 tion from a lay source.

Council of  
 Constan-  
 tinople.

Latin Greek  
 and English  
 churches ad-  
 mit Pope  
 Agatho their  
 supreme  
 head.

It was not to be expected, that the clergy of that day having  
 been brought up in the principles and doctrine of the Roman  
 Catholic faith should so readily and quietly relinquish and dis-  
 avow so principal and fundamental a point of their belief, as  
 the necessity and jurisdiction of an universal bishop over the  
 church of Christ. Without entering into the reasons for this  
 supremacy, we can trace very early instances of its having been  
 admitted by the Latin and Greek churches as well as by our  
 English ancestors. In the year 682 in the council of Con-  
 stantinople where there were 331 bishops, Pope Agatho chose  
 Theodore archbishop of Canterbury to be his legate to preside  
 over the Latin Greek and all other bishops there assembled.  
 And it appears by that pope's letter to the council \* *Sperabamus*  
*de Britannia Theodorum* &c. whom he calls his brother fellow  
 bishop and archbishop and a philosopher &c.; that he actually  
 deferred the meeting of it till the arrival of Theodore: Thus  
*vides*, says our historian, *quantum eum fecerit ut ejus expectatione*  
*universale concilium differret.*

\* Malmesbury, L. 1. De Gest. Pol. Ang. p. 112.



In order to reconcile the clergy and with them the generality of the nation to this innovation in their religion, in the year 1534 king Henry sent this proposition to be agitated in both universities, and in the greatest and most famous monasteries of the nation: that is, "Whether the bishop of Rome had of right any more authority within the kingdom of England, than any other foreign bishop?" who returned a negative answer\*. And in the parliament of the same year the first act that passed (26 Hen. VIII. c. 1.) corroborated and confirmed the act of the convocation of the clergy, by which he was declared "supreme head of the church of England, with all honours dignities pre-eminencies jurisdictions privileges authorities immunities profits and commodities to the said dignity belonging; with full power and authority to visit repress redress reform order correct restrain and amend all such errors heresies abuses offences whatsoever they be, which by any manner of *spiritual authority* or *jurisdiction* ought or may lawfully be reformed repressed ordered redressed corrected restrained or amended" &c. This act is generally spoken of by most writers, as the act, which is supposed or pretended to have invested the king with *spiritual jurisdiction*; which say the adversaries of the church of England is put out of all doubt by the detail of the spiritual functions and offices, which the king is especially enabled by that act to perform. But we must recollect, in the first place that the confirmation and sanction

BOOK III.  
CHAP. VI.

Question put  
to the clergy  
upon the  
pope's su-  
premacy.

Act of con-  
vocation by  
the clergy  
confirmed by  
parliament.

\* Vide the comment upon this answer, p. 290, *Jura Anglorum*.

given:



BOOK III. given by this act to the declaration of convocation has necessary  
 CHAP. VI. reference to that declaration, and that declaration of acknow-  
*Salvo in the* ledgement of the king's supremacy was made with the express  
*declaration of* *salvo, quantum per Christi leges licet*: I find not one word in the  
*the convoca-*  
*tion.* act, which in its more ordinary acceptation, does not immediately  
 import a power of external coercion, which belongs not to the  
 church but to the state.

Meaning of  
 visitation.

We are generally accustomed to apply the term *visitation* to the  
 act of an ordinary spiritual superior visiting and examining into  
 the conduct and principles of his spiritual subjects, and it is  
 generally conceived of ecclesiastical or *spiritual* matters: but  
 that does not prevent the secular or civil power from *visiting* and  
 examining into the guilt of those, whom by the laws they are  
 empowered to punish. It might indeed have been argued, that  
 the legislature had attempted really to invest the sovereign with  
*spiritual* jurisdiction, had the act declared, that the king might  
 examine into doctrines and pronounce upon heresy, that he  
 might suspend interdict or excommunicate those, whom he should  
 suspect or find guilty, or absolve and restore the faculties unto or  
 receive into the church those, who should have repented and  
 made satisfaction.

Extinguish-  
 ment of the  
 papal power  
 in England.

Little more was done during the next two years, that tended  
 to throw any light upon the subject till the 28th of the king,  
 A. D. 1536, when the final act was passed for *extinguishing the au-*  
*thority*



*thority of the bishop of Rome.* By this it was enacted, that if any person should extol the authority of the bishop of Rome, he should incur the penalty of a *præmunire*: that every officer both ecclesiastical and lay should be sworn to renounce the said bishop and his authority, and resist it to the utmost of his power; and that any oath formerly taken in maintenance of the said bishop or his authority should be reputed void \*. And finally, that the refusal of the said oath should be judged high treason. Nothing herein affects the subject under our investigation; which is, whether the statute law of this realm give or pretend to give real *spiritual* power or jurisdiction to the king of England. Nothing however will so strongly bespeak the sense, in which the nation at this time understood the acts, which were almost annually passed, as a very full clear and explicit declaration made by the principal bishops and clergymen of the realm upon the functions and divine institution of bishops and priests, in order to disabuse the public of their erroneous and mistaken conceptions of these acts of parliament, and to meet and do away the objections urged by many of the more zealous opposers of reform against any species of *spiritual* or *ecclesiastical* power being given to the king.

BOOK III.  
CHAP. VI.

“ † As touching the sacrament of holy orders, we will that

\* This surely was as high an attempt to dispense with the conscientious obligations of an oath, as ever was imputed to the Roman pontiff.

† Cott. Libr. Cleop. E. 6. Vide Addenda to Burnett's Collect. p. 321.

Declaration  
of the bishops  
and principal  
clergy con-  
cerning the  
functions and  
institution of  
bishops and  
priests.

“ all



BOOK III. "all bishops and preachers shall instruct and teach our people  
CHAP. VI. "committed by us unto their spiritual charge.

True spiritual  
powers.

"First, how that Christ and his Apostles did institute and ordain in the New Testament, that besides the civil powers and government of kings and princes, which is called in scripture, *potestas gladii*, the power of the sword, there should be also continually in the church militant, certain other ministers or officers, which should have spiritual power, authority and commission under Christ, to preach and teach the word of God, unto his people, and to dispense and administer the sacraments of God unto them; and by the same to confer and give the grace of the Holy Ghost, to consecrate the blessed body of Christ in the sacrament of the altar, to loose and absolve from sin, all persons which be duly penitent and sorry for the same; to bind and excommunicate such as be guilty in manifest crimes and sins, and will not amend their defaults; to order and consecrate others in the same room, order and office, whereunto they be called and admitted themselves; and finally to feed Christ's people like good pastors, and rectors, as the apostle calleth them, with their wholesome doctrine, and by their continual exhortations and monitions to reduce them from sin and iniquity, so much as in them lieth, and to bring them unto the perfect knowledge, the perfect love and dread of God, and unto the perfect charity of their neighbours.

"Item,



“ *Item*, That this office, this ministration, this power and au-  
 “ thority is no tyrannical power, having no certain laws or  
 “ limits, within the which it ought to be contained, nor yet none  
 “ absolute power, but it is a moderate power, subject, deter-  
 “ mined, and restrained unto those certain limits and ends, for  
 “ the which the same was appointed by God’s ordinance; which,  
 “ as was said before, is only to administer and distribute unto  
 “ the members of Christ’s mystical body, spiritual and everlasting  
 “ things; that is to say, the pure and heavenly doctrine of  
 “ Christ’s gospel, and the graces conferred in his sacraments:  
 “ and therefore this said power and administration is called in  
 “ some places of scripture, *donum et gratia*, a gift and a grace;  
 “ in some places it is called *claves sive potestas clavium*, that is to  
 “ say the keys, or the power of the keys, whereby is signified a  
 “ certain limited office restrained unto the execution of a special  
 “ function or ministration, according to the saying of St. *Paul* in  
 “ his first chapter of his epistle to the *Romans*, and in the fourth  
 “ chapter of his epistle to *Timothy*, and also in the fourth chapter  
 “ of his epistle to the *Ephesians*, where he writes in this sentence,  
 “ *Quum ascendisset Christus in altum, captivam duxit captivitatem,*  
 “ *et dedit dona hominibus; dedit autem, alios quidem apostolos, alios*  
 “ *vero prophetas, alios vero evangelistas, alios autem pastores ac*  
 “ *doctores, ad instaurationem sanctorum, in opus administrationis, in*  
 “ *ædificationem corporis Christi, donec perveniamus omnes fidei et*  
 “ *agnitionis Filii Dei, in virum perfectum, in mensuram ætatis plene*  
 “ *adultæ Christi.* That is to say, When Christ ascended into  
 “ heaven,

BOOK III.

CHAP. VI.

The spiritual  
power certain  
and defined.Power of the  
keys.



BOOK III. "heaven, he subdued and vanquished very Captivity herself;  
CHAP. VI. "and led or made her thrall and captive, and distributed and gave  
"divers heavenly gifts and graces unto men here on earth; and  
"among all, he made some the apostles, some priests, some evan-  
"gelists, some pastors and doctors, to the intent they should exe-  
"cute the work and office of their administration, to the instau-  
"ration, instruction, and edifying of the members of Christ's  
"mystical body; and that they should also not cease from the  
"execution of their said office, until all the said members were  
"not only reduced and brought unto unity of the faith, and the  
"knowledge of the Son of God, but also that they were come  
"unto a perfect state, and full age therein, that is to say, until  
"they were so established and confirmed in the same, that they  
"could no more afterwards be wavering therein, and be led or  
"carried like children in any contrary doctrine or opinion, by  
"the craft or subtle persuasion of the false pastors and teachers,  
"which go about by craft, to bring them into erroneous opinions,  
"but that they should constantly follow the true doctrine of  
"Christ's gospel, growing and increasing continually by charity  
"unto a perfect member of that body, whereof Christ is the very  
"head; in whom if the whole body, that is to say, if every part  
"and member be grown and come unto his perfect estate, not all  
"in like, but every one according to the gift and quality, which  
"is deputed unto it, and so to be compacted, united and incor-  
"porated together in the said body, no doubt, but that whole  
"body and every part thereof shall thereby be made the more  
"perfect.



“ perfect and the more strong, by reason of that mutual love and  
 “ charity, which one member so united in the body hath unto  
 “ the other: by which words it appeareth evidently not only  
 “ that St. *Paul* accounted and numbered this said power and  
 “ office of the pastors and doctors among the proper and special  
 “ gifts of the Holy Ghost, but also it appeareth that the same was  
 “ a limited power and office, ordained specially and only for the  
 “ causes and purposes before rehearsed.

BOOK III.

CHAP. VI.

“ *Item*, That this power, office, and administration is necessary  
 “ to be preserved here in earth for three special and principal  
 “ causes. *First*, for that it is the commandment of God it should  
 “ be so, as it appeareth in sundry places of scripture. *Secondly*,  
 “ for that God hath instituted and ordained none other ordinary  
 “ mean or instrument, whereby he will make us partakers of the  
 “ reconciliation which is by Christ, and confer and give the  
 “ graces of his holy spirit unto us, and make us the right inhe-  
 “ ritors of everlasting life, there to reign with him for ever in  
 “ glory, but only his words and sacraments; and therefore the  
 “ office and power to minister the said words and sacraments,  
 “ may in no wise be suffered to perish, or to be abolished, ac-  
 “ cording to the saying of St. Paul, *Quomodo credent in eum de quo*  
 “ *non audierunt? quomodo autem audient sine prædicante? quomodo*  
 “ *autem prædicabunt nisi missi fuerunt? sicut scriptum est, quam*  
 “ *speciosi super montes pedes evangelizantium pacem, annunciantium*  
 “ *bona!* Thirdly, because the said power and office or function  
 “ hath

Perpetuation  
of the mi-  
nistry.



BOOK III. " hath annexed unto it assuredly promises of excellent and ineesti-  
 CHAP. VI. " mable things; for thereby is conferred and given the Holy  
 " Ghost with all his graces, and finally our justification and  
 " everlasting life, according to the saying of St. Paul, *Non me*  
 " *pudet evangelii Jesu Christi, potentia siquidem est Dei ad salutem*  
 " *omni credenti*; that is to say, I am not ashamed of the room  
 " and office, which I have given unto me by Christ, to preach  
 " his gospel, for it is the power of God, that is to say, the elect  
 " organ or instrument ordained by God and endued with such  
 " virtue and efficacy, that it is able to give and minister effectually  
 " everlasting life unto all those, that will believe and obey  
 " unto the same.

Ordination of  
 bishops and  
 priests by im-  
 position of  
 hands.

" *Item*, That this office, this power and authority was com-  
 " mitted and given by Christ and his apostles unto certain per-  
 " sons only, that is to say, unto priests and bishops, whom they  
 " did elect, call, and admit thereunto by their prayers and im-  
 " positions of their hands."

Just concep-  
 tion of spiri-  
 tual power.

Such is the nature of the *true spiritual* power, which the  
 Protestant clergy solemnly held to exist in *church governors*:  
 nor could any other Christian divine express the nature of it in  
 a more orthodox manner. In this the churches of England  
 and Rome agree. But my enquiry is, whether any particle  
 of such *spiritual power* was intended to be vested by parliament  
 in the King? Whatever misconceptions have been formed con-  
 cerning



cerning the translation of *spiritual* power and authority from the Pope to the King, no spiritual power, which was vested or supposed to be vested in the Bishop of Rome was in its nature transferable by human means, nor was it in fact attempted to be transferred by parliament to the King: though the parliament did undertake to transfer all such power, as was allowed to the Pope by the English nation, which evidently could have been but *civil*, as having been granted by the nation, who could possess and therefore give no other. The real spiritual power of the Pope, otherwise *the power of the keys*, which Roman Catholics believe to be vested in the supreme bishop of the hierarchy, says an approved Roman Catholic divine \*, “differs as much from the temporal jurisdiction and authority of kings, as the regal and episcopal characters differ from one another: or as the functions of a priest differ from those of a civil or military officer, who all act in different capacities and move in different spheres:” and this *spiritual* power the parliament of this day neither pretended to extinguish, nor to transfer to the king: but declared it to exist in the ordinaries or archbishops of the realm.

BOOK III.  
CHAP. VI.

What intended to be transferred to the King.

It has been objected to me, that I have assumed very unwarrantable liberties by interpreting the acts of Henry VIII. in a new unheard-of manner, in order to adapt them to my own imaginary system of explaining away the objectionable quality

\* Manning's Conv. and Reform. compared, p. 189.

both



BOOK III. both of the supremacy itself and the oath, by which it is sworn to.

CHAP. VI. I shall speak more fully of the oath hereafter. It may however

tend to clear away much darkness and confusion, to shew how these acts were understood by some of the most approved Pro-

Opinions of  
Protestant di-  
vines upon  
the supre-  
macy.

testant writers. Doctor Bilson bishop of Winchester in Queen Elizabeth's reign \*, Doctor Carleton bishop of Chichester in the reign of King James I. †, and Doctor Bramhall archbishop of Armagh in the reign of King Charles I. ‡, all speak one and the same language. However not to multiply quotations I shall confine myself to the last writer, who speaks most explicitly upon the import tendency and effects of these acts of Hen. VIII. The sum of his book is expressed in the title-page of it to consist in shewing, "That the great controversy about papal power  
" is not a question of faith, but of interest and profit, not  
" with the church of Rome, but with the court of Rome." It ought to be seriously observed by all the Roman Catholic subjects of his Majesty, how little obnoxious they would be in the eyes of their Protestant brethren, if they always confined their submission to the pure *spiritual* supremacy of the head of the hierarchy in the See of Rome, as by their religious belief they admit it to exist, and as they lately have by their oath sworn

\* In his Treatise of Christian Subjection, which he wrote against Cardinal Allen.

† In his Treatise of Jurisdiction episcopal regal and papal.

‡ Schisme guarded.



only to maintain it. Pity it is for all parties, that the sentiments of this learned Archbishop are not as generally practised, as they are pretended to be believed.

BOOK III.

CHAP. VI.

“ My last ground (says he) is, that neither King Henry VIII. nor any of his legislators, did ever endeavour to deprive the Bishop of Rome of the power of the keys, or any part thereof; either the key of order, or the key of jurisdiction: I mean, jurisdiction purely spiritual, which hath place only in the inner court of conscience, and over such persons, as submit willingly: nor did ever challenge or endeavour to assume to themselves either the key of jurisdiction purely spiritual. All which they deprived the *Pope* of, all which they assumed to themselves, was the external regiment of the church by coactive power, to be exercised by persons capable of the respective branches of it. This power the Bishops of Rome never had or could have justly over their subjects, but under them, whose subjects they were. And therefore, when we meet with these words, or the like (that no foreign prelate shall exercise any manner of power, jurisdiction, &c. ecclesiastical within this realm) it is not to be understood of internal or purely spiritual power in the court of conscience, or the power of the keys (we see the contrary practised every day), but of external and coactive power in ecclesiastical causes, in *foro contentioso*. And that it is, and ought so to be understood;

Dr. Bramhall's opinion: that parliament meant not to affect spiritual supremacy.

“ I prove



BOOK III. "I prove clearly by a proviso in one main act of parliament, and  
 CHAP. VI. "an article of the English church. They (that is the parliament)  
 "profess, their ordinance is merely political: What hath a  
 "political ordinance with power purely spiritual? They seek  
 "only to preserve the kingdom from rapine, &c." *And then having  
 produced the article, he concludes:* "You see the power is political,  
 "the sword is political, all is political. Our kings leave the  
 "power of the keys and jurisdiction purely spiritual, to those  
 "to whom Christ hath left it."

Again the same Bishop further adds (p. 169) "Wheresoever  
 "our laws do deny all spiritual jurisdiction to the Pope in  
 "England, it is in that sense, that we call the exterior court of  
 "the church, the spiritual court. They do not intend at all to  
 "deprive him of the power of the keys, or of any spiritual power  
 "that was bequeathed him by Christ, or by his apostles, where he  
 "is able to prove his legacy." To conclude, omitting a world  
 of other passages to the same effect, he saith; "We have  
 "not renounced the substance of the papacy, except the sub-  
 "stance of the papacy do consist in coercive power." And he  
 again says (p. 218.) "No difference between Roman Catholics  
 "and ourselves about the papacy, but only about the extent of  
 "papal power, &c." (p. 160.) "Our ancestors cast out external  
 "*ecclesiastical* coercive jurisdiction; the same do we. They did  
 "not take away from the Pope the power of the keys, or ju-  
 "isdiction



“ jurisdiction *purely* spiritual; no more do we. (p. 170.) What-  
 “ soever power our laws did divest the Pope of, they invested  
 “ the King with it: but they never invested the King with any  
 “ *spiritual* power or jurisdiction, witness the injunction of  
 “ Queen Elizabeth, the articles of the church, King James, our  
 “ statutes,” &c.

BOOK III.  
 CHAP. VI.

Such as these acts establishing the supremacy appeared to this Protestant Archbishop, such did they also appear to many of our Roman Catholic ancestors, especially to those, who did not plunge themselves blindfold into the resistless torrent of prejudice and party. Sir John Winter \* in the days of Charles II. published † some observations upon the oath of supremacy, as he expresses it in his title page, “ for the better satisfaction  
 “ of those that may find themselves concerned therein.” Thus then he speaks (p. 17.) “ Many of the Roman Catholics of these  
 “ nations (nay most of the most knowing amongst them) do  
 “ profess against such overbold assertions, such immoderate attri-  
 “ butes, such unlimited powers and practices, as much as any Pro-  
 “ testant whatsoever: and although they hold communion with

Sir John  
 Winter's (a  
 Catholic)  
 opinion upon  
 same supre-  
 macy.

\* He was a zealous royalist, who defended Lidney House during the civil war, and afterwards going over into France, he attended the royal family in banishment and was in the secret of most of their affairs. Dodd's Hist. of the Church of England, vol. iii. lib. ii. p. 59.

† A small quarto printed in London 1679.



BOOK III. "the church of Rome *in spiritualibus*, and acknowledge (as their  
 CHAP. VI. "ancient forefathers did) that the Pope is the supreme spiri-  
 "tual pastor (which the Bishop of Derry \* says) is not meddled  
 "with one way or the other in this oath, so it be in spirituals.  
 "And his royal majesty King James († Apol. for the Oath of  
 "Allegiance p. 46.) could be content, that the *Bishop of Rome*  
 "were *Patriarch of the West* and were the first Bishop among  
 "all Bishops and *Princeps Episcoporum* so as to be no otherwise,  
 "than as Peter was *Princeps Apostolorum*. Yet the said Roman  
 "Catholics do not hold it as a part of their faith, that the Pope is  
 "infallibly free from error, or that he can absolve subjects from  
 "their obedience to their natural prince, or from the obligation  
 "of faithful upright dealing with their neighbours, though such  
 "their prince or neighbour be not of their religion, or were  
 "excommunicated, or what more the Pope could do by himself,  
 "or with any other against them for that cause. And all this  
 "(say they) they will cheerfully testify upon their oaths, without  
 "equivocation or mental reservation, if an oath in clear terms  
 "expressing as aforesaid be tendered unto them." All these things

\* Dr. Bramhall afterwards promoted to the primacy of Armagh.

† This is falsely quoted by Sir John Winter, the passage alluded to being in the *Premonition to all most mightie monarches, kings, free princes and states of Christen-  
 dome*, p. 306, of the folio edition of King James's Works 1616. His Majesty, *loco citato*, further says, "For myself (if that were the question) I would with  
 "all my heart give my consent, that the Bishop of Rome should have the first  
 "seat. I being a western king would go with the Patriarch of the west."

have



have been sworn to by the existing generation of Roman Catholics, who may therefore, as I have before observed, be properly termed *sworn Whigs and Cisalpines*.

BOOK III.  
CHAP. VI.

Unjust as I see the suppression of religious houses and establishments in the reign of Henry VIII. yet cannot I therefore admit, that the King's being enabled to do it by Parliament, was a grant of any *spiritual* power or jurisdiction to the sovereign: for as the application of worldly substance to such institutions could only be an effect of the *civil* power, so must the disappropriation proceed from the same cause. I speak only of the competence of the *civil* power to act upon such objects: not of the justice, with which the power was exercised in the particular instance.

Power of dis-  
appropriating  
church lands  
no *spiritual*  
jurisdiction.

Almost all the theological adversaries of the established church of England have pressed their objections against its *lay* constitution structure and continuance chiefly upon the act, which authorised the King to name ecclesiastical commissioners, upon his appointment of Thomas Cromwell a layman to the high and till then unknown office of *vicar general under the King in all ecclesiastical affairs*, or as Lord Herbert of Cherbury styles him, *vicegerent general of the King's authority in ecclesiastical affairs*, and upon the acts, by which he was enabled and did in fact exercise this commission either by himself or deputies. I have

Of the argu-  
ment that the  
church of  
England has  
a *lay* founda-  
tion.



BOOK III.  
CHAP. VI.

formerly said (*Jura Anglorum* p. 256.) what I still adhere to, that I presume only to discuss *as a lawyer* the right power authority or prerogative transferred annexed and confirmed unto, or revived vested or acknowledged in the person of our sovereign by different acts of Parliament now in force. In pursuing then such discussion I must first remark, that in the choice or appointment of commissioners under the act, which authorises the King to name them, it was perfectly immaterial to the case under consideration, whether their head or any number of them were lay or clerical, in orders or out of orders: for a layman was as fully qualified as a bishop to execute or exercise any authority, which it was competent for the king or parliament to give: for this could be no other, than *civil* or *temporal*. Equally irrelevant to the question is the circumstance of Thomas Cromwell's being the son of a blacksmith. Had every drop of his blood been of the stem royal or imperial, it would not have advanced him by one degree towards the capacity of deriving *spiritual* jurisdiction from a *lay* source.

Illegal acts  
of the sove-  
reign alter  
not the law.

Though the wisdom of the English constitution preserve the person of its first magistrate sacred and inviolable from punishment under the amiable presumption, that the king can do no wrong, yet many acts, which our kings have heretofore done by themselves and those acting under them, have been both *illegal* and *unconstitutional*. The responsibility for such acts the constitution



constitution very wisely throws upon the ministers and advisers of the measures: but God avert, that the illegal or unconstitutional acts of the sovereign should form precedents for imitation, or rules whereby to interpret the sense and meaning of the laws!

BOOK III.  
CHAP. VI.

King Henry himself had not (no prince under our constitution can have) any original absolute and uncontrollable supreme sovereign power independent of parliament or of the community\*. Ignorance alone can allow to the king of England

King can  
have no su-  
preme power  
but through  
Parliament.

any

\* This question was involved in the grand controversy, which was carried on about the end of the last century by the greatest divines of the established church, concerning the rights of the clergy to meet and act in convocation without the authority or interference of the prince. The first book upon this subject was intituled *A Letter to a Convocation Man concerning the Rights Powers and Privileges of that Body*, and was generally attributed to Sir Bartholomew Shower. This was soon answered by Dr. Wake (afterwards Archbishop of Canterbury) in a book intituled *The Authority of Christian Princes over their Ecclesiastical Synods asserted &c.* Mr. Wright a lawyer, the Rev. Mr. Hill and Dr. West wrote several tracts upon the same subject. At last Dr. Atterbury entered very warmly into the contest and published (first anonymously) his *Rights Powers and Privileges of an English Convocation stated and vindicated, in Answer to a late Book of Dr. Wake's &c.* This drew Bishop Burnet into the controversy, who published some reflections upon Atterbury's book. Dr. Kennet (afterwards Bishop of Peterborough) under the countenance of Archbishop Tennison replied to Atterbury's work and strongly vindicated Burnet, Wake, and the other opponents of Atterbury. Many others of less note entered the lists and for some years the press teemed with publications upon the rights of the prince to convene and control the clergy &c. Having disavowed every intention of entering into any thing like religious con-  
trovery,



BOOK III.  
CHAP. VI.

any ecclesiastical right power or authority by a different title from that, by which he holds his constitutional crown. Thus the despotic Henry with all his lust for absolute and arbitrary sway,

troverfy, I shall content myself with observing, that when in 1704 Dr. Atterbury was presented by letters patent to the deanery of Carlisle, the Bishop amongst several reasons (irrelevant to the matter now under discussion) alleged against him, that he had published some things in his book against her Majesty's supremacy. One particular paragraph was selected out of the whole as the most glaringly offensive, which is to the following purport. Vide *Rights Powers &c.* edit. 2d, p. 214.

“The church here in England is under the government both of the absolute  
“and limited sovereign: under the government of the limited sovereign within  
“the compass of his prerogative: under the government of the absolute sovereign without any restraint or bounds, except what the revealed will of God  
“and the eternal rule of right reason prescribe. The Pope usurped not only on  
“the King, the limited; but on the King and Parliament the absolute sovereignty: and what was taken from him therefore was not all thrown into the  
“prerogative, but restored severally to its respective owners.”

The Bishop thought this paragraph (as well as many others) contained such popular doctrines, as were very opposite to the known laws of this realm, and to the articles and canons of the established church. His Lordship accordingly required the signature of Dr. Atterbury to the following recantation, before he would institute him into the deanery: “I do hereby openly and freely revoke  
“and renounce whatever in this paragraph may reasonably seem to impeach her  
“Majesty's regal supremacy inherent in her royal person; or any way necessarily to infer a co-ordination with her in the sovereignty of this realm.” Dr. Atterbury refused to subscribe the recantation, and the Bishop withheld the institution, until the Queen intimated her royal pleasure to the Bishop to institute



sway, did not even pretend, but through Parliament to acquire the right of nominating and appointing these commissioners or a *vicar* or *vicegerent* in those very rights and powers, which he had received

BOOK III.

CHAP. VI.

tute the dean, which was immediately done without further delay \*. It appears to me, that Dr. Atterbury's ideas of the *supreme* and executive *civil* power, to which the civil establishment of the church was subject, were perfectly just: and the discrimination, which he drew between that, which proceeded from the State and that, which the revealed will of God prescribed, was precise and accurate. The Bishop however thought, that orthodoxy in the momentous point of the regal supremacy, on which according to him the whole fabric of the Reformation depended was most strongly to be recommended to all prelates, and that Dr. Atterbury ought not to be instituted, his doctrines being repugnant to the 12 Eliz. c. 13. which directs the deprivation of every unbeliever in the thirty-nine articles, and it appeared, that by common law, he could refuse institution, for whatever the statute had made a just cause of deprivation.

The prince's right over the convocations of the clergy, could never have become the subject of a controversy, if the fair discrimination had been previously made between the civil and spiritual objects of their meeting. My opinion therefore upon the question is a direct corollary from what I have before said upon the general subject, viz. Whenever the clergy convene in their corporate capacity to deliberate upon any matter concerning the civil establishment of religion or any other matter besides that of their evangelical or pure spiritual mission cognizance or jurisdiction, *per et ultra ea, quæ eis divinitus commissa sunt*, there they may do it independently of the *civil* magistrate, and may if occasion call

\* Vide True State of the Controversy between the Bishop and Dean of Carlisle touching the Regal Supremacy, in a Letter from a Northern Divine to a Member of the University of Oxford, 1704, pag. 8.



BOOK III. received from parliament. It is evident, that the power or au-  
 CHAP. VI. thority of the deputed or attorney (such is every vicar or vice-  
 gerent) cannot exceed that of the principal, who deposes. Henry  
 could

call for it, be obliged to do it in defiance or even contradiction to his commands: for he cannot interfere with, much less oppose the exercise of those powers, which the governors of Christ's church hold *jure divino*. The charge and responsibility of souls, which we find from scripture to have been committed to some human individuals (call them bishops, presbyters or what you please) necessarily import a right of vigilance and superintendence, and sometimes of consultation and deliberation and open judgment or declaration upon matters clearly out of the resort of temporal power. This original or primitive transcendent and divine right of church governors to convene upon such *spiritual* occasions, as I have mentioned, does not prevent them in a Christian State, to apply to the *civil* magistrate for his consent and approbation of their meeting for the sake of peace security and solemnity. Nor will I suppose a body of national clergy on any occasion so wrong-headed or turbulent, as to refuse to convene, whenever the *civil* magistrate shall desire or command them: for being so convened, they would be still at liberty to act upon the objects of their exclusive cognizance and jurisdiction positively negatively or specially, as they should find expedient. So when the English clergy are convened in form of a convocation, the king by advice of his council issues a writ to the archbishop, which is mandatory upon him to convene the bishops and inferior clergy of his province at a certain time and place, and for certain particular or general purposes as specified in the writ. Then goes forth the archbishop's mandate to the individuals, who are summoned to attend, either by themselves or proxies. All this is done to enable them to perform *legally* whatever act concerns the liberties and rights of the church of England, which I have endeavoured to shew were confirmed by the great charter and had before been granted by  
 the



could not by letters patent authorise Cromwell to execute, what the law did not authorise himself to perform. He could be no more empowered by virtue of the subsisting acts of parliament to impose or alter real spiritual discipline, than to officiate in the service or administer the sacraments, which it must essentially concern: no more to exert the censures of the church or to excommunicate, than to loose or bind by power of the keys; no more to deprive a governor of Christ's church or one acting

BOOK III.

CHAP. VI.

What acts touching religion parliament cannot do.

the State: and must therefore for ever remain under its control. The submission of the clergy refers only to such acts, as are done by them in convocation by virtue of or with reference to the authority of the writs and mandates, by which they are summoned. Their actual convocation deprives them not of the *power of the keys*; and if they find it adviseable on such occasion to make any declaration upon the Christian revelation, or enjoin any point of pure *spiritual* discipline, such act not producing *ex vi sua* any *civil* effect would be as completely independent of the *civil* magistrate, as if the King's writ had not preceded the archbishop's mandate. The primitive rights of Christian bishops not being holden *jure humano*, are not controllable in their exercise by the *civil* magistrate. The King of England has only an executive and magistratical, not a legislative power over the church of England. He alone can no more make laws to bind the clergy, than the laity. And when it is said, that the canons bind the clergy and not the laity, it means no more, than that such laws as are formed by the clergy in convocation assented to and approved of by the King bind the clergy as members of that corporation which made them, in the same manner, as *bye-laws* bind all those, who consent to them, where the law of the land allows a power to certain individuals to make bye-laws. But the general law must essentially sanction and control the bye-laws, for that alone gives them a binding or obligatory quality.



**BOOK III.** under him of his power and right to preach and teach the word of  
**CHAP. VI.** God, than to confer them ; no more to release Christians from the conscientious obligation of obeying their spiritual pastors, than to impose any such conscientious obligation upon them ; no more to enjoin and compel the ministers of the gospel to exercise their functions, when prohibited by the authority, which empowered them to do it, than to consecrate ordain or institute \*. The abuse of power or violation of law should produce no other effect, than to evince the propriety and enforce the obligation of the power and law so abused or violated.

King Henry's oath of supremacy.

The 28th of Henry VIII, which went totally to abolish the pope's supremacy in this kingdom and made the refusal to subscribe to the oath of the king's supremacy high treason, gave to the king no additional powers beyond what he before possessed : and therefore it requires no particular comment : but as that part of the act, which required the oath of supremacy is now repealed, I am free to say of it, that a more despotic cruel and unjust law was never attempted to be passed, than to take away the lives of loyal subjects, merely for refusing to renounce a necessary part of their religious belief, viz. the necessity of one universal bishop or head under Christ of his visible church upon earth. For this Fisher bishop of Rochester, the great and vir-

\* So says Bracton, the King cannot degrade clergymen because he cannot promote them to orders, *Nec clericos degradare, quia non potest eos ad ordines promoveré.*



tuous Sir Thomas More, and according to Heylin 13 abbots and priors 77 monks and other religious persons, besides a great number of the laity suffered death as in cases of high treason. The cruelty of this act was not to be evaded: the oath, which it prescribed was naturally understood to have reference to the act: and yet its direct words evidently went so far beyond the true sense and meaning of the act, in its positive part of admitting the supremacy of the King, that no reasons palliations or constructions, were they ever so ingenious or liberal could justify a Roman Catholic to subscribe to it. The statute had reference to the act of submission of the clergy, which acknowledged the king to be supreme head of the church of England, *Quantum per Christi leges licet*: which was granting no real *spiritual supremacy* by those, who believed the episcopal authority to be of divine institution. But the oath taken separately as it was administered to individuals, expressed an absolute and unqualified acknowledgment of the king's supremacy, as well as an absolute and unqualified renunciation of the supremacy of the pope and upon the face of it therefore purported to admit the same power authority and jurisdiction in the King as it expressly refused or denied to the Pope. To this sense no Roman Catholic could lawfully subscribe for two reasons: 1st, because according to his belief parliament could not grant the *power of the keys*\*; 2dly, because

Variance between the oath and the act.

The oath of supremacy could not be taken by a Roman Catholic.

\* The present object of my investigation is whether the present laws of England acknowledge any particle of this *power of the keys* in the king.



BOOK III. in his belief also the supreme executive power of the keys is ne-  
 CHAP. VI. cessarily vested in the bishop of Rome as the universal pastor of  
 Christ's church upon earth.

Sir Thomas  
 More.

Sir Thomas More, who upon no account could be induced to deliver even to his most intimate friend bishop Fisher his opinion upon the oath from the time of the passing of the act to his trial, when he received sentence of death, spoke thus in court\*:  
 "Well, seeing, that I am condemned, God knows how justly,  
 "I will speak freely for the disburthening my conscience what I  
 "think of this law. When I perceived it was the king's plea-  
 "sure to sift out from whence the pope's authority was derived;  
 "I confess, I studied seven years together to find out the truth of  
 "it, and I could not meet with the works of any one doctor, ap-  
 "proved by the church, that avouch a layman was or ever could  
 "be the head of the church." And when the chancellor replied,  
 "Would you be esteemed wiser or to have a sincerer conscience  
 "than all the bishops learned doctors nobility and commons of  
 "the realm?" Sir Thomas answered: "I am able to produce  
 "against one bishop, which you can produce on your side, a  
 "hundred holy and catholic bishops for my opinion and against  
 "one realm the custom of all Christendom." He was beheaded  
 on Tower Hill in the year 1535. It is clear and evident, that  
 this great and venerable man understood, that this oath of supre-

\* State Trials, vol. i. p. 61.



macy required of the juror to renounce the *spiritual primacy* of BOOK III.  
CHAP. VI. the bishop of Rome and to acknowledge that same *spiritual primacy* in the king, to neither of which can a Roman Catholic with a safe conscience subscribe.

The remaining part of the reign of king Henry VIII. was a continued scene of cruelty rigor and tyranny; and proud as he was of his newly assumed title of "supreme head of the church of England under God," yet whatever acts concerning religion were afterwards made, were all made by parliament; which circumstance absolutely destroys the very idea of the king's being immediately under God supreme head on earth of the church: for what absolute supremacy can there be in that head, which cannot legislate for his subjects? But it was never reasonably pretended, that the king in ecclesiastical matters could make laws, that would bind the English nation. This point of law was determined in the case of *Middleton v. Croft* \* as I before observed. And it is very justly observed by Nat. Bacon † concerning "the king's right of nomination, that they were never absolutely possessed of any such power, but as committees of parliament and by delegation and concession from them." And p. 133. "So as upon the whole it must be acknowledged that however the king was supreme head of causes ecclesiastical, yet he had not the definitive sentence in appeal, nor absolute supremacy," Henry not  
supreme head  
of the church  
because he  
could not le-  
gislate. All power to  
the king from  
parliament.

\* *Strange's Reports*, 1056.

† *Discourse of the Government of England*, p. 132.

"but



BOOK III. "but that the same was left to parliament." It must therefore be  
 CHAP. VI. allowed, that in interpreting the statutes of this day concerning  
 the supremacy supposed or acknowledged to be vested in the  
 king, such supremacy only could be intended, as parliament could  
 grant: now no one denies, that Henry and his successors (in the  
 famous act of the second of his reign his successors are not named)  
 possessed their supremacy by statute law, and therefore by con-  
 cession of parliament: nor does any writer, that I have met with  
 pretend to say, that this supremacy was transferred or had moved  
 from the see of Rome to the English senate. Until then it be  
 proved that the English parliament by some means had acquired  
 a participation in the *power of the keys*, they never can be said  
 to have committed any such to the king, and the king must have  
 received from parliament (or the community) that as well as every  
 other power, which in his royal capacity he could possibly pos-  
 sess.

Parliamen-  
 tary supre-  
 macy means  
 the headship  
 of the civil  
 establishment.

The remaining acts of Henry's reign, which affected religion  
 were all in pointed confirmation of this truth, that what is called  
*supremacy* by the statutes means no more, than the office of first  
 executive magistrate over the *civil* establishment of religion, which  
 establishment must by its nature *wholly* proceed from the state.  
 He was invested (31 Hen. VIII. c. 13.) *by parliament* with the  
 spoils and revenues of all the abbies monasteries religious houses  
 and communities throughout the kingdom. And in the same  
 session of parliament (c. 14.) the belief of transubstantiation,  
 communion



communion under one kind, private mass, auricular confession, the celibacy of priests, and voluntary vows of perpetual chastity, were ordered to be maintained under pain of death. At last (34 & 35 Hen. VIII. c. 1.) every innovation made in religion from the year of our Lord 1540, every doctrine preached and maintained contrary to the king's instructions speaking irreverently of the sacrament of the altar and even reading the bible in the vulgar tongue were made crimes punishable with death. All these severe penal statutes, which were passed, are such acts of coercion, as cannot be exercised by the spiritual power, nor can be annexed to the *power of the keys*. If the king were really the "supreme head under God of the church of England" all these things might have been ordained and enacted by him, without the concurrence and consent of the lords and commons. If indeed he might be supposed to have wanted the aid of a council, the convocation of the clergy and not the parliament should have concurred with him in deciding or legislating upon these *ecclesiastical* or *spiritual* matters.

During the seven years reign of the infant Edward VI. a great variety of acts were passed concerning religion, of which I shall but slightly touch, as they were all repealed by his succeeding sister Queen Mary. Whatever parts of any of them were revived by Queen Elizabeth and are laws at this day, I shall notice more particularly in the progress of my investigation of the point in question, which is, Whether any particle of such *spiritual* power and

BOOK III.

CHAP. VI.

The penal acts of Henry could not have been enacted by the spiritual power.

Question of discussion.



BOOK III. and jurisdiction, as Roman Catholics admit in the bishop of  
 CHAP. VI. Rome, which is confined to the *power of the keys*, be vested or  
 supposed to be vested in the king of England by the laws estab-  
 lishing his supremacy over the church of England.

Roman Ca-  
 tholic doc-  
 trine of papal  
 supremacy.

The whole doctrine of the Roman Catholic church concerning  
 the supremacy of the bishop of Rome is contained in these two  
 articles.

First, that Christ after his resurrection to preserve the unity of  
 his church, gave to St. Peter a superintendency or jurisdiction over  
 his whole flock.

Secondly, that this office according to Christ's institution was  
 after St. Peter's decease to pass to his successors appointed by  
 the church: and that these are actually the bishops of Rome.

I have disavowed the intention of falling into controversy: I  
 merely therefore state this doctrine: and in order to prove, that I  
 state it fairly, and that it has not been lately taken up by modern  
 divines nor is the mere effect of what are commonly called papal  
 encroachments or usurpations upon sovereigns, I shall beg leave to  
 remind my reader that St. Augustin in the fourth century (he was  
 born A. D. 350) expressly affirms \* that he was holden in the

St. Augus-  
 tin's notion of  
 a supreme bi-  
 shop.

\* Lib. Con. Epist. Fund. c. 5.



Catholic communion by the succession of bishops from the see of Peter the apostle, to whom Christ after his resurrection committed his flock, to the present episcopacy, *Tenct ab ipsa sede Petri apostoli, cui pascendas oves suas post resurrectionem Dominus commendavit, usque ad præsentem episcopatum successio sacerdotum.* Now it is evident from what I have before advanced, that all the power and authority, which Christ gave to his apostles whilst upon earth were *purely spiritual*: none other can therefore have descended to their successors.

No other alteration had been made in the religion of the English nation during the reign of king Henry VIII. than the rejection of the spiritual supremacy of the see of Rome: for the acknowledgment of the king's supremacy was no further a change in religion, than it invaded the *power of the keys*: but unfortunately the obvious and direct meaning of the words of the oath of supremacy, which it was made *high treason* to refuse, left to the conscientious no room for evasion nor grounds for reconciling the taking of it to the obligations of the orthodox believer. If an oath be to be taken in the plain clear and usually accepted sense of the words, in which it is expressed without mental reservation or equivocation, I know not how any one Protestant or Catholic could with a safe conscience have sworn to the supremacy, as was required by the acts of Henry. I put out of the question the negative part of the oath, which goes to renounce the supremacy of the Pope. The sincerity of swearing to such renunciation de-

Whether  
Henry's oath  
could be  
sworn to by  
any.



BOOK III.

CHAP. VI.

pend upon the conviction of the juror upon that single question. But I must ever maintain it impossible that a Christian, who professes to believe, that Jesus Christ gave to his apostles a power, which has been continued by *spiritual* generation to their successors to feed teach and govern his church upon earth, should with a safe conscience swear, according to the ordinary sense of the words, that a person is "the supreme head of that church upon earth immediately under Christ," to whom he cannot by his religious belief attribute one particle of this apostolical or *spiritual* power or jurisdiction. For the belief, that the church of Christ is governed by *spiritual* jurisdiction so given by Christ to be transmitted through his apostles to all future church governors is a formal exclusion of the belief, that the same church can have a temporal supreme head or governor, drawing his power from another source, than apostolical succession.

The positive  
part of the  
oath false.

If the juror pretend to secure his conscience under the subterfuge of swearing *secundum animum imponentis*, which against internal conviction certainly is unlawful, yet the very parliament, which imposes the oath and makes the refusal of it high treason, manifestly proves to him, that they alone have all the sovereign and supreme power over the church of England, which can be possessed by human right, and consequently that one single component branch of their aggregate body cannot be "supreme immediately under God" over that community, which has delegated to them their sovereignty. Our constitution knows of no

*absolute*



*absolute supreme power* in the monarch immediately under God BOOK III.  
CHAP. VI.  
 over any of his subjects, in any sense whatsoever independently of  
 parliament. For this reason the venerable and learned More, who  
 professed to have studied this question with intense application for  
 the last seven years of his life, is reported in his trial \* to have  
 declared, "that a parliament can make a king and depose him and  
 "that every parliament man may give his consent thereto, but  
 "that the subject cannot be bound so in the case of supremacy." More's opi-  
nion.  
 The king therefore is wholly dependent upon parliament for  
 every particle of his power, as the very existence of it depends  
 upon parliament: how then can he be in any sense *supreme* im-  
 mediately under God? This respectable character died a martyr  
 to these truths: for no man will be so bigoted to prejudice as to  
 suppose, that Sir Thomas More, who had been chancellor for so  
 many years and who retained the most unprecedented collection  
 on the very block, should not have understood the purport of his  
 own indictment, or the cause for which he suffered. Yet we read,  
 that after the jury had found him guilty, the lord chancellor, as  
 chief in the commission for trying him, was proceeding to pro-  
 nounce judgment, which Sir Thomas observing said to him:  
 "My lord, when I was concerned in the law, the practice in such  
 "cases was to ask the prisoner before sentence, whether he had  
 "any thing to offer why judgment should not be pronounced  
 "against him?" To which question, when put by the chancellor,

\* State Trials, vol. i. ubi supra.



BOOK III. Sir Thomas thus answered: "For as much my Lords as this  
 CHAP. VI. "indictment is grounded upon an act of parliament directly  
 "repugnant to the laws of God and his holy church, the su-  
 "preme government of which or of any part thereof, no tem-  
 "poral person may by any law presume to take upon him &c."  
 This evidently shews the sense, in which Sir Thomas More un-  
 derstood the oath of supremacy, which was then enjoined to be  
 taken under the penalties of high treason, and justifies the ob-  
 servation, that the *animus imponentis* can never warrant a juror  
 to swear against the conviction of his own conscience.

Acts of the  
 protectorate  
 under the in-  
 fant Ed. VI.

So violently were the lord protector and his party bent upon the  
 work of reformation during the minority of the infant Edward, that  
 it appears they very inconsiderately assumed to the civil legislature  
 the whole supreme and sovereign right power and authority of  
 governing the church as well as the state\*. They forced upon  
 the nation, contrary to their ancient usage, the necessity of re-  
 ceiving the communion under both kinds and punished all gain-  
 sayers with arbitrary fine and imprisonment†. They declared,  
 that bishops should no longer be elected by deans and chapters,  
 but be appointed by the king's letters patent: and that all pro-  
 cesses ecclesiastical should be made in the king's name only, with  
 the bishops *teste* added to it‡. They made it high treason to  
 deny the King's or assert the Pope's supremacy over the church

\* 1 Ed. VI. c. 1.

† Ed. VI. c. 2.

‡ Ed. VI. c. 12.



of England or Ireland. They repealed all the acts of the late reign \* that supported the ancient faith and form of church government (except the Pope's supremacy †). They dissolved all colleges chauntries hospitals fraternities brotherhoods guilds and other promotions of the like nature, and confiscated the revenues, upon which they subsisted to the crown ‡. They then passed an act for the total change and uniformity in the divine service and the administration of the sacraments: and for punishing the non-conformity thereto with perpetual imprisonment §. They ordained the observance of certain fast days under pain of imprisonment ||: and they absolved the clergy from their obligation of celibacy by authorising them to marry ¶. They abolished the use of all former books of prayers and devotions and enjoined the destruction of all statues and pictures of saints as idolatrous \*\*. They empowered the king to appoint thirty-two commissioners to peruse revise and abrogate the old and make any new ecclesiastical laws, in a word, to change alter new model and reform the whole system of religion ††. They enacted additional penalties for enforcing uniformity to the new service and ritual: they enjoined under arbitrary punishments of the *spiritual* courts the observance of certain holy days

BOOK III.  
CHAP. VI.

\* Particularly the act of the six articles commonly called the Whip with six strings.

† 1 Ed. VI. c. 14.      ‡ 2 & 3 Ed. VI. c. 1.      § 3 & 4 Ed. VI. c. 10.  
 || 2 & 3 Ed. VI. c. 21.      ¶ 3 & 4 Ed. VI. c. 10.      \*\* 3 & 4 Ed. VI. c. 11.  
 †† 5 & 6 Ed. VI. c. 1.

and



BOOK III. and fast days: and \* declared the issue of all priests and re-  
 CHAP. VI. ligious persons legitimate and inheritable (notwithstanding their  
 parents' vows of perpetual chastity and poverty).

Heylin's  
 opinion of the  
 acts of Ed. VI.

Never surely was there such a medley of *civil* and *temporal* *ecclesiastical* and *spiritual* laws attempted to be enforced by a civil legislature. They can however in no sense be called acts of the supreme power of the infant king, but of a parliament, (unduely I fear) biaſſed and intimidated by the arts intrigues and influence of the protector. Heylin the great and learned defender of the church of England against the imputation of their having only "a parliamentary religion, parliamentary bishops," &c. informs us, that all the acts, which were passed in this reign †, which "concerned church matters, as viz. "An act for uniformity of divine service, and for the confirmation of the book of ordination, 5 & 6 Ed. VI. c. 1.—an act declaring which days only shall be kept for holy days and which for fasting days, c. 3.—against striking or drawing weapons either in the church or churchyards, c. 4.—and finally another act against the legitimating of the marriages of priests and ministers, c. 12, &c. were built on no other ground work than the resolutions of the clergy convened in convocation A. D. 1552;" which were 41 in number and published under this title: "Articuli

\* 5 & 6 Ed. VI. c. 12, 13.

† Heylin, *Κειμήλια Εκκλησιαστικά*, p. 13.



“de quibus in fynodo. Londini anno 1552, ad tollendum BOOK III.  
 “opinionum diffentionem et consentum veræ religionis firman- CHAP. VI.  
 “dum inter episcopos & alios eruditos viros convenerat regiâ  
 “authoritate editi.” “It is worth our observation,” says this  
 author, “that though the parliament was held at the very time,  
 “yet neither in this parliament nor in that which followed, is  
 “there so much as the least word, which reflecteth this way or  
 “meddleth any thing at all with the said book of articles.”  
 And from hence he concludes, that we are to look upon (p. 16)  
 “the articles and doctrine of the church (excepting such as  
 “were contained in the Book of Common Prayer) to have  
 “been composed confirmed and settled in no other way, than  
 “by the clergy only in their convocation, the king’s authority  
 “co-operating and concurring with them.” Now, as it always  
 was the law of England\* that no act, canon, or decree of  
 convocation even confirmed by the king’s charter under his  
 great seal can bind the laity, without a parliamentary confirma-  
 tion, it is obvious, that no act of parliament can be said to  
 confirm particular canons, which has no reference either ex-  
 pressed or implied to them: and Dr. Heylin assures us “not  
 “one word of these acts reflecteth this way or meddleth any  
 “thing at all with the said articles:” they did not therefore in  
 any manner affect them: but the things, which were enacted  
 by these acts of parliament were *ex confesso* laws of the land.

\* Strange’s Reports 1056. Middleton v. Croft and Salkeld 673.



BOOK III. and bound all subjects to observe them (*in quantum per leges*  
 CHAP. VI. *Christi licebat*): I must therefore conclude differently from Dr. Heylin, that the whole force efficacy and virtue of these laws (whatever it might have been for they were afterwards repealed) proceeded from parliament: and that the king (though allowed to be supreme head of the church of England by all its members) with the whole body of his clergy cannot do any act, that shall become a law to the British nation. The obligation, which the clergy are under of obeying the acts of convocation, arises from the common law of England, which is immemorial usage, and may be altered whenever the legislature shall think proper. This arises from the universally true position, that the *spiritual* power of Christ's church (*i. e.* the power of the keys) cannot of itself *proprio vigore* produce any *civil* effect.

No power  
 but that of  
 parliament  
 can bind the  
 nation.

So far from the parliament's having confirmed only what the convocation had previously judged determined and decreed upon these church matters, as Heylin asserts, we find by the thirty-fifth of these articles the direct reverse: that the convocation undertook to approve of and confirm what the parliament had previously enacted. "The book lately delivered to the church  
 " of England by the authority of the King and Parliament con-  
 " taining the manner and form of public prayer and the mi-  
 " nistration of the sacraments in the said church of England: as  
 " also the book published by the same authority for ordering  
 " ministers



“ ministers in the church are both of them very pious, as to  
 “ truth of doctrine, in nothing contrary but agreeable to the  
 “ wholesome doctrine of the gospel, which they do very much  
 “ promote and illustrate. And for that cause they are by  
 “ all faithful members of the church of England, but chiefly  
 “ of the ministers of the word, with all thankfulness and readi-  
 “ ness of mind to be received approved and commended to the  
 “ people of God.”

BOOK III.

CHAP. VI.

It is an unanswerable proof, that the clergy in this reign were  
 not so adverse from a parliamentary religion and parliamentary  
 bishops, as the learned Heylin and others have since been.  
 Their conduct at the beginning of it, though highly disgrace-  
 ful to their order and dignity bespoke what confused and erro-  
 neous ideas were then entertained of this newly-invented prero-  
 gative in the Crown. Although Sir Edward Coke and many other  
 legal political and historical writers have attempted to prove, that  
 nothing new was claimed by Henry VIII. and his successors, when  
 they assumed the title of *supreme head of the church of England*,  
 they all are deficient in explaining themselves clearly upon the  
 subject. All the predecessors of King Henry on the throne of  
 England, were so far only the heads or the first executive ma-  
 gistrates of the *civil* establishment of religion in this country,  
 as the canon and statute law of the realm admitted: their powers  
 were sometimes enlarged and sometimes abridged. At one time

Conduct of  
the clergy  
temp. Ed. VI.What powers  
the nation  
gave to the  
King and  
Pope.



BOOK III. the laws gave more, at other times less of this power over the  
 CHAP. VI. civil establishment of religion to the person, to whom the nation  
 allowed the absolute plenitude of *spiritual* supremacy both of  
 dignity and jurisdiction: but whatever part of this power or  
 control over the *civil* establishment was given to the Pope, was re-  
 vocable by its nature. No author of any credit has even attempted  
 to prove, that our Roman Catholic ancestors before the reforma-  
 tion refused *spiritual* primacy of dignity and jurisdiction to the  
 Bishop of Rome, much less, that they attributed any such to  
 the King, although some persons in the heat of their fury for  
 reform pretended or very inconsiderately asserted, that they  
 believed or supposed it.

Surrender of  
 the bishoprics  
 into the  
 King's hands.

Heylin \* himself speaking of the act of Edw. VI. concerning  
 the election of bishops says, that "the intent of the contrivers  
 " of this act was to weaken the authority of the episcopal order  
 " by forcing them from their strong hold of divine institution  
 " and making them no other than the King's ministers only.  
 " And of this act such use was made, that the bishops of those  
 " times were not in a capacity of conferring orders, but as they  
 " were thereunto empowered by special license." No sooner  
 was this act passed, than the prelates all surrendered their bishop-  
 rics into the King's hands. A species of *spiritual* prostitution un-  
 precedented in church history, and never since followed till the

\* Heyl. Hist. quoted in the History of the Church of Great Britain, p. 162,  
 printed 1674.



late infamous attempts of some Gallican priests to renounce BOOK III.  
 their order by surrender of their sacerdotal charters (lettres de CHAP. VI.  
 prêtrize) to the National Convention. “\* The bishops”, says  
 Burnet, “were required to take out commissions of the same  
 “form, with those, they had taken out in King Henry’s time.  
 “Cranmer set an example to the rest and took out his commis-  
 “sion.” This same historian thus speaks of the commission  
 taken out by Bonner from Henry VIII. “† But the opposite Bonner’s  
commission.  
 “party used all the arts possible to insinuate themselves into the  
 “King: and therefore to shew how far their compliance would  
 “go, Bonner took a strange commission from the King on the  
 “12th of November this year, (A. D. 1539.) ‡ the substance  
 “of it is: That since all jurisdictions both ecclesiastical and  
 “civil flow from the King as supreme head, and he was the  
 “foundation of all power, it became those, who exercised it only  
 “(*precario*) at the King’s courtesie gratefully to acknowledge,  
 “that they had it only of his bounty: and to declare, that they  
 “would deliver it up again, when it should please him to call for  
 “it. And since the King had constituted the Lord Cromwell his  
 “vicegerent in ecclesiastical affairs, yet because he could not look  
 “into all those matters, therefore the King upon Bonner’s peti-  
 “tion, did empower him in his own stead to ordain such as he  
 “found worthy to present and give institution, with all the other

\* History of the Reformation, part ii. p. 6.

† Hist. Ref. part i. p. 267.

‡ Collection to 1st part No. xiv.



BOOK III. "parts of episcopal authority, for which he is duly commissioned  
 CHAP. VI. "and this to last during the King's pleasure only. And all the  
 "parts of episcopal function being reckoned up, it concluded  
 "with a strict charge to the bishop to ordain none but such,  
 "of whose integrity good life and learning he had very good  
 "assurance."

Cranmer's commission from King Edward is the same, with this only difference, says Burnet, "\* That there is no mention made of a vicar-general in these commissions, as was in the former, there being none after Cromwell advanced to that dignity (p. 6.)" Bishop Burnet says (*ubi supra*) "After he had taken this commission, Bonner might have been called "one of the King's bishops."

Parliamentarian or regal bishops.

Cranmer.

These are historical facts, that Dr. Heylin did not touch upon: they would not indeed have proved the English bishops to have been immediately *parliamentarian* but *regal*. This sort of lay episcopacy was not now new to Cranmer: for he had about seventeen years before taken out a similar commission from Henry VIII. for Collyer tells us, in his Church History, that "from the collections of Dr. Yale the learned Harmer cites a transcript of this

\* Vide the Commission at large in Collection to 2d part No. II. taken from Cranmer's Register.

" com-



“ commission, agreeing exactly with that of Bonner, in which  
 “ this note is subjoined. Tales licentias acceperunt Thomas  
 “ Archiepiscopus Cant. mense Oct. 1535. Edwardus Archiepif-  
 “ copus Eborac. Johannes Episcopus Lincoln. 13. Oct. 1535.  
 “ &c.”

BOOK III.  
 CHAP. VI.

Dr. Heylin should have recollected, that it was by parliament, that Henry VIII. was enabled to appoint Cromwell his vicegerent in *spirituals*: but if the King had received his own *spiritual power* or ecclesiastical supremacy immediately from God, he could not have stood in need of the aid of parliament to enable him to constitute a vicar-general. No man, who attentively considers all the circumstances of King Henry's acquiring the parliamentary recognition of his ecclesiastical supremacy, can either doubt of his motives in aiming at it, or of his wishes to extend it further than the laws would justify. My investigation is into the purport and effects of the laws of the land: not into the causes of an ambitious cruel and lustful monarch's abuse of them. These commissions neither were sanctioned by the statutes, nor could they justify the base flattery of these temporizing bishops in surrendering to the *civil* magistrate their divine commission of feeding teaching and governing the flock of Christ.

Mr. Collyer a very learned moderate and respectable Protestant historian speaks fully upon these commissions\*. “*After the*

Collyer's opinion of these commissions.

\* Church History, Part II. l. iii. p. 169.

“*King*



BOOK III. " *King* has thus declared himself *Patriarch* in his dominions,  
 CHAP. VI. " claimed all manner of *spiritual* authority, and pronounced  
 " the bishops no more than his *delegates at pleasure*: after  
 " this these words are thrown into the commission to give it  
 " the more passable complection, *besides those things which are*  
 " *known from holy scriptures to belong to you by divine right.*

" Now, with submission, this clause seems to come in too  
 " late, and is utterly inconsistent with the former part of the  
 " commission. For if the King is the *fountain* of all manner  
 " of *ecclesiastical jurisdiction*: if his *lay vicegerent* might lawfully  
 " supply the room of all the bishops in *England*, provided he  
 " were at leisure, and able to do it in person: if the bishops in  
 " the execution of their office are only the King's *representatives*,  
 " and *revocable at pleasure*: if these affirmations are all defen-  
 " sible, as the commission sets forth, then without question  
 " the *hierarchy* can have no jurisdiction assigned in the *New*  
 " *Testament* nor any authority derived from our Saviour.

" But if the church is a distinct and entire society: if in  
 " *pure spirituals* she is constituted independent on all the kings  
 " on the earth; if she is furnished with power sufficient to  
 " answer the ends of her *charter*; if these powers were settled  
 " by our Saviour upon the apostles and their successors to the  
 " world's end; if the *hierarchy* can make out this title, then I  
 " must



“ must crave leave to think, those who suggested the draught of  
 “ this instrument were no great *divines*.”

BOOK III.  
 CHAP. VI.

Neither the infamy and misconduct of particular bishops, in  
 bartering their divine commission for a human charter, nor the  
 criminal arrogance of a prince in assuming the exercise of apo-  
 stolical jurisdiction, can alter or affect the operation of existing  
 laws. Nor would the private views or motives of the promoters  
 of the reformation under the infant Edward have weakened  
 or confirmed any of the laws concerning religion passed under his  
 reign, had they not all been repealed by his succeeding sister  
 Mary: for Dr. Heylin \* speaking of the transactions under  
 Edward VI. says, “ Some great men about the court, under  
 “ colour of removing such corruptions as remained in the  
 “ church, had cast their eyes upon the spoiles of shrines and  
 “ images and the improving of their own fortunes by the  
 “ chantery lands; all which they most sacrilegiously divided  
 “ amongst themselves.”

Laws retain  
 their force  
 notwithstanding  
 the abuse  
 of them by  
 Princes and  
 Prelates.

I should have passed over the reign of Queen Mary in  
 silence, as all the laws enacted during it, which affected reli-  
 gion have been repealed, unless my Reverend Correspondent  
 had towards the close of his letter to me hazarded the following  
 doctrine, which although I hold to be utterly false, yet if it ac-

Reign of  
 Queen Mary.

\* Pref. to his History.



BOOK III.  
CHAP. VI.

quire any degree of credit, tends immediately to shake the titles disturb the possessions and rack the consciences of every owner of abbey and church lands or tythes throughout the kingdom. P. 223, he tells me that, "Whatever alms donations oblations and obventions are given to the church for the service of God, the assistance of the poor and other religious uses are by divine right inalienable from the intended purposes and therefore in whatever hands they may be lodged, the church as general superintendent of the observance of the law of God, has a right to command application of them to the intended service; and that in case of disobedience, she can enforce her commands by suspensions interdictions excommunications, &c. as she thinks proper." From a man of his pretended theological accuracy, I shall expect an unqualified subscription to these theological aphorisms: that what is established by *divine right*, can be dispensed with altered or abolished by no human or positive law ecclesiastical or civil\*: that the *church*, in every sense, in which it can mean or apply to the Catholic or universal church or visible congregation of true believers in Christ upon earth, is utterly incapable of possessing any temporal property: and that the Church cannot enforce by her spiritual arms or weapons those things, which are not of her competence to command.

Objections  
against the  
titles of all  
owners of  
abbey lands  
or tythes.

\* How can rights that are *divine* be given up? and if they are *divine*, no *human* authority can supersede or limit them. *Preface to the Regale and Pontificate*, vii.

Never



Never was there since the formation of the English constitution so solemn unequivocal and decisive a declaration and recognition of the rights of the English nation over church property as the act of the 1st and 2d of Philip and Mary. This act expressed the consent of the English nation: it was expressly founded upon the petition of the English clergy (set forth at length in the act): it also imported the consent and approbation of his Holiness fully expressed in the letters of dispensation of the most Reverend Father the Lord Legate Cardinal Pole by authority of the See Apostolic (also set forth in the act). The general purport and effect of that act was to confirm to all proprietors and holders of church lands their right and property in them, though none of them had been disappropriated above twenty years and many of them less than five from the purposes of their original institution. Prescription could not have taken away their divine right if they ever had it, for surely in cases of *divine right* above all others it is supereminently true, *quod ab initio non valuit, tractu temporis non valebit*. If the temporal and civil quiet of the subjects amongst one another were a warrantable ground to break in upon the divine right, by which this church property is said to be holden, yet would not that ground justify the retention of a great part of it in the hands of the Crown, which could without any disturbance or litigation be restored to its former and original purposes: nor indeed could any authority, even that, in which the supreme and *altum dominium* of the property avowedly resided, confirm the title

BOOK III.

CHAP. VI.

Act of 1 and  
2 Philip and  
Mary.Titles of individuals to  
church property.Rights of all  
parties interested  
attend-  
ed to.



BOOK III. of the proprietors, which (according to my Correspondent)  
 CHAP. VI. accrued by the invasion and violation of a *divine right*.

The State  
 has the dis-  
 posal of all  
 land in Eng-  
 land.

No act of any legislature could have attended more accurately to the rights of all parties interested; those of the nation at large, those of the national clergy, those of the Pope, are all minutely and separately provided for. And the act expressly solemnly and formally declares, " Yet for that the title of all lands posses-  
 " sions and hereditaments in this your Majesty's realm and do-  
 " minions is grounded in the laws statutes and customs of the  
 " same and by your high jurisdiction authority royal and crown  
 " imperial and in your courts only to be impleaded ordered tried  
 " and judged and none otherwise: and understanding, that the  
 " whole full and most gracious intents mind and determination  
 " of your most excellent Majesties be, that all and every person  
 " and persons, bodies politic and corporate their heirs successors  
 " and assigns shall have keep retain and enjoy all" &c. (here are general words to express every possible species of church property) " within this realm or the dominions of the same, by  
 " such laws and statutes as were in force before the first day of  
 " this present parliament and by other lawful conveyance to them  
 " thereof made." Notwithstanding my Reverend Correspondent honour me with *his sincerest regards* (p. 225.) though *with the utmost difference of opinion upon theological subjects*, I must still crave leave to continue our difference upon this last subject and firmly to believe with the legislators of 1554, with the body  
 of



of the English clergy of that day and with Cardinal Pole, and with BOOK III.  
CHAP. VI. Pope Julius III. whose legate he was, and under whose authority he acted, that land in England can only be possessed disposed of or alienated by the *civil* power of the temporal courts of England, which derive not their authority from the church or church governors: consequently that no title can accrue to lands in England by *divine right*, nor of course can they in any possible case be unalienable by that power, by which alone they can be acquired holden possessed or disposed of\*.

\* Since the foregoing sheets were sent to press, I have read a publication, which contains much sound reasoning upon many subjects that I have attempted to elucidate. In several points I differ from the learned author: in others I closely agree with him. From what he has said in his usual energetic manner upon the nature of church property (*Dyer's Enquiry into the Nature of Subscription to the thirty-nine Articles*, p. 243, 2d edit.) I presume upon his not disapproving of the principles, which I have endeavoured to establish relative to the warmly contested question of the magistrate's right of disposing of or disappropriating church property. "If the clergy are not ecclesiastical pensioners of the state, to whom of right do the public revenues belong? If they are not dependant upon the crown, why do they to this day, as feudal vassals, do homage for their temporalities? When therefore the state shall be obliged to seek resources in the revenues of the church, it will not be an act of plunder of robbery or of perjury, but of directing property into a channel, which the proprietor thinks most honourable and most beneficial. A more equal distribution would be an act of mercy: a more decent regulation, an act of wisdom: a total resumption where public necessity calls, an act of justice. And when the rule of mercy prescribes the limits of reformation, nothing but what is excessive, would be lost."



BOOK III.

CHAP. VI.

Reign of  
Queen Eliza-  
beth.Her supre-  
macy.Effects of the  
oath of su-  
premacy.Nature of the  
oath of su-  
premacy.

No sooner had Queen Elizabeth ascended the throne, than she earnestly began to prosecute the work of reformation: for as every act concerning religion passed either in the days of Henry VIII. or Edward VI. had been repealed by Queen Mary, the reformation may be properly said to have taken new root from Queen Elizabeth, as the principal and fundamental laws, which now effect the established religion of the church of England were enacted in her reign either by the revival of some of the acts of her father and brother or the introduction of new laws. The supremacy of that queen is the subject of my present enquiry: and as the oath, by which all British subjects are called upon to acknowledge a similar supremacy in the sovereign for the time being, is the necessary qualification for a seat in parliament and many other rights of citizens, it is an object of no small importance to the state, that the nature obligation and effects of this oath should be fairly and fully disclosed, that the refusal to take it may be no longer imputed to the ignorance or bigotry of the recusants, nor the imposing of it, be thought necessary to the good or safety of the state.

There probably never existed a law of such importance in any state, which has been so variously interpreted and so differently represented as that, which recognizes or establishes the supremacy of the king over the church of England: but unfortunately, it is not such a law as may be silently and passively submitted to without committing the subject's opinion upon the



the purport and meaning of it. The sense and meaning of <sup>BOOK III.</sup> the law is supposed to be reduced to the form of an oath and <sup>CHAP. VI.</sup> every British subject is called upon by this solemn act of religion to express his unfeigned and hearty assent and approbation of it, before he can be admitted to serve his country in the cabinet field or senate. I sincerely hope, that the reluctance, with which the subject is listened to, is the close forerunner of the repeal of the severe law of demanding it. The torrents of blood, which have flowed from the conscientious recusants to subscribe to this oath, call for something beyond an inefficient shame or a sullen foreboding, that the law exists. Legislators are certainly the proper and best interpreters of their own laws, and as far as concerns the observance and effects of their laws, they certainly are the definitive and supreme judges. But when a man is required to call upon the Deity in an oath to witness the truth of what he swears, there ends the interpretation of other persons. The juror can swear only in that sense, in which he understands the obvious and generally accepted meaning of the words of his oath: nor can his conscience be saved by any assurance of others, that the words, in which he swears, bear a different meaning from that, in which he understands them in their general and usual acceptation. True it is, that the laws of England acknowledge no other power or supremacy in the first executive magistrate over the church of England than a magistratical supremacy in administering and executing those laws, by which any part of the *civil* establishment

Of the interpretation of oaths.



BOOK III.

CHAP. VI.

establishment of religion is affected, which no one, when fairly explained, will refuse. But it is also true, that the oath is so worded as to extend much further than the law. My remaining task is to consider, whether it ever could or now can be taken by Roman Catholics with a safe conscience.

First act of  
Elizabeth.

The very first act passed under Queen Elizabeth was to restore to the crown the ancient jurisdiction over the estate ecclesiastical and spiritual and abolishing all foreign powers repugnant to the same: by which all the acts of her sister were repealed and several of her father's and her brother's were revived. The Pope's spiritual and ecclesiastical power was to cease from the last day of that session: and "all such jurisdiction privileges  
"superiorities and preeminencies spiritual and ecclesiastical, as  
"by any spiritual or ecclesiastical power or authority hath heretofore been or may lawfully be exercised or used for the  
"visitation of the ecclesiastical state or persons and for reformation order and correction of the same and of all manner  
"of errors heresies schisms abuses offences contempts and enormities were by the authority of that parliament united and annexed to the imperial crown of this realm." Her majesty was moreover empowered "to appoint commissioners to exercise  
"use occupy and execute under her all manner of jurisdictions  
"privileges and preeminencies in any wise touching or concerning spiritual or ecclesiastical jurisdiction. And to visit  
"reform redress order correct and amend all such errors heresies  
"schisms



“schisms abuses offences contempts and enormities whatsoever,” BOOK III.  
 &c. And the following oath was required to be taken by cer- CHAP. VI.  
 tain persons in the act named:

“I, A. B. do utterly testify and declare in my conscience, The oath of  
supremacy  
temp. Eliz.  
 “that the Queen’s highness is the only supreme governor of  
 “this realm, and of all other her highness’ dominions and  
 “countries as well in all spiritual or ecclesiastical things or causes,  
 “as temporal; and that no foreign prince, person, prelate, state  
 “or potentate, hath or ought to have any jurisdiction, power,  
 “superiority, preeminence or authority ecclesiastical or spiritual,  
 “within this realm: and therefore I do utterly renounce and  
 “forsake all foreign jurisdictions, powers, superiorities and au-  
 “thorities, and do promise, that from henceforth I shall bear  
 “faith and true allegiance to the Queen’s highness, her heirs  
 “and lawful successors, and to my power shall assist and defend  
 “all jurisdictions, preeminencies, privileges and authorities  
 “granted or belonging to the Queen’s highness, her heirs and  
 “successors, or united and annexed to the imperial crown of  
 “this realm.—So help me God, and by the contents of this  
 “book.”

The refusal of this oath incapacitated the recusant to hold any Effects of de-  
nying the  
Queen’s su-  
premacy.  
 public office. And the penalty for the first denial of the Queen’s  
 supremacy as established by this act was forfeiture of goods and  
 chattels: for the second *præmunire* and for the third *high treason*.



BOOK III.

CHAP. VI.

It is matter of notoriety, that every bishop opposed the bill in the house of lords: and the convocation, which was convened at the same time drew up a solemn instrument expressive of their belief in the tenets of the Roman Catholic church; to the substance of which instrument both universities also expressed their public assent. This instrument though presented to parliament, produced not its desired effect in preventing the passing of the bill. The law therefore as far as it was in itself lawful, was not in any manner affected by this opposition and resistance of the clergy: for in their spiritual capacity they have no share in the legislative power: nor do the bishops, as was once pretended, make a distinct integral part of the legislature.

Positive and  
negative parts  
of the oath.

An oath of this tendency must necessarily have shocked the generality of the nation, who had been educated in the Roman Catholic persuasion. In fact, it has always appeared irreconcilable to my understanding, upon what ground any person, who believed, that in *the power of the keys* committed to the apostles and their successors the whole spiritual power of Christ's church was comprised, could swear with a safe conscience that a layman or woman not pretending to the evangelical mission or apostolical succession can be a governor in *spiritual* as well as *temporal* things. This oath, as I before observed contained two parts, one *positive*, the other *negative*. The first was to acknowledge an exclusive supreme power in *spiritual* and *ecclesiastical* things and causes in the sovereign; the latter was to renounce

all



all kind of *spiritual* or *ecclesiastical* power in any bishop prelate or council out of the realm, or who did not derive their power from the English sovereign or rather parliament. I am the more particular in considering these two distinct parts of the oath, as the first or positive part of it was repealed very properly by the first of William and Mary (c. 8). From this time the oath was narrowed much in its operation; being now only intended, as it still cruelly operates, to exclude every Roman Catholic subject from the first benefit of the constitution, the active and passive voice in parliament, and the *natural civil* right of serving and defending his country by his councils or his arms. This negative oath, which operates such extensive and such unmerited cruelty upon millions of his majesty's subjects, is conceived in these words:

“ I do declare that no foreign prince person prelate state or potentate hath or ought to have any jurisdiction power superiority preeminence or authority ecclesiastical or spiritual within this realm.—So help me God.”

Present oath of supremacy.

From every possible sense and meaning of the words of this oath, whoever understands the English language must have internal evidence, that they unequivocally go to declare, that no human being can or ought *de facto* or *de jure* to exercise any [particle of *spiritual* or *ecclesiastical* power (such is the power of the keys) over the subjects of this state, who

Obvious meaning of the oath.



BOOK III.

CHAP. VI.

who is not an Englishman born or naturalized, and who derives that power from any other source, than that of the state of England. This is to confine the process of the apostolic commission to geographical boundaries: it is to give to a particular state the right of resisting the command to the apostles and their successors, *Go and teach all nations*: as if the Christian members of the church of Antioch \* had heretofore disavowed the spiritual and ecclesiastical power and jurisdiction of *Judas* and *Silas*, who were sent to them and received their commands to teach feed and govern their church, because they were themselves foreigners and had received their commission and jurisdiction from foreign persons: it is to attempt to counteract the operations of the holy spirit of God, *Spiritus ubi vult spirat* †: because it is to swear, that no Englishman can be bounden to submit to any *spiritual* authority or jurisdiction out of his own country; which is confining the *power of the keys* to the state and climate of this island. I enter not into the consideration of the reasons, which may induce other persons to subscribe to this oath. Every man must form his own conscience upon it. But it is very certain, that the same belief is not now previously necessary to the taking of this negative oath, as was for the taking of the positive part of Elizabeth's oath which having been now repealed for more than 100 years releases me from all delicacy in speaking of such of our ancestors as subscribed to it.

The present oath is merely negative and exclusive; it involves

\* Acts c. xv.

† John iii. 8.



no question of the actual existence or right of existence of the spiritual power in any individual. It may therefore be lawfully taken by any person, who conscientiously believes, that every Christian bishop, who has validly received ordination and jurisdiction becomes absolute and independent of any spiritual superior in the church of Christ and may lawfully and validly perpetuate by spiritual generation this same absolute and independent order and jurisdiction to his successors *in infinitum*. This opinion is the grand essential difference between the church of England and the church of Rome. It is not my province to enter into the controversy upon the necessity of an universal bishop or supreme head or vicar under Christ over the whole Catholic church. But the nature of this enquiry obliges me to state, that the submission to an universal bishop is a necessary term of communion with the see of Rome, and consequently, that a person ceases to be a Roman Catholic, who ceases to hold and submit to the primacy of dignity and jurisdiction of the Bishop of Rome.

BOOK III.

CHAP. VI.

Who may lawfully take this negative oath.

Every Roman Catholic of this country has upon his oath “declared, that he does not believe, that the pope of Rome or any foreign prince prelate state or potentate hath or ought to have any temporal or civil jurisdiction power superiority or preeminence directly or indirectly within this realm.” This evidently excludes the pope from any right of interfering with or affecting in any manner the crown of Great Britain or the civil and temporal authority of the British legislature. But it

Difference between the oath of supremacy and the last oath prescribed to Roman Catholics.



## BOOK III.

## CHAP. VI.

also strongly and emphatically marks the difference between the *temporal* or *civil* and the *spiritual* or *ecclesiastical* powers of the see of Rome. Catholics and protestants equally renounce the former: but not the latter. The same legislature, which requires these different oaths from their subjects, and gives to them such opposite effects, must evidently mean different things, and expect that they are understood differently by those, who take them: otherwise it is to be presumed, that they would concenter them into one oath, or at least allow the same advantages to the subscribers of either. There can be no pretext then for explaining this negative oath in such a manner, as to render it lawful for a Roman Catholic to take. Even the wide rule of the *animus imponentis* proves, that the taker of the oath of supremacy swears to something more, than the taker of the Roman Catholic oath of his present Majesty: that is, the first renounces both the *spiritual* and *temporal* power of the pope: the second only his *temporal* power. At no period has this oath of supremacy been holden lawful for a Catholic to subscribe. Sir John Winter, who struggles hard for admitting the qualified explanation of no papal power being renounced, but that civil power, which he is not entitled to, by virtue of his primacy, says nevertheless \* “ These things, I say have made it to be firmly believed by them (learned men in the law) and those of their profession over all Christendom, that in taking the said oath, with what explanation soever (if such explanation be not as publicly made known and de-

\* Observations on the Oath, p. 81.

“ clared)



“ clared) they give just scandal (which is *malum in se*), that they  
 “ renounce their religion ; as indeed the *common acceptation of the*  
 “ *words of the said oath do import no less.*” It ever is absolutely  
 impossible to take an oath under explanation in a different sense  
 from the obvious import of the words without mental reserva-  
 tion or equivocation. This evidently ought to be done in all  
 cases whatsoever. For where the *animus imponentis* and the *ani-*  
*mus jurantis* differ, the oath cannot be taken in full sincerity, as  
 is self-evident. I am all amazement then, to read protestant  
 lawyers, and protestant divines establishing and maintaining the  
 lawfulness of swearing under explanations and *secundum animum*  
*imponentis*, which essentially import *mental reservation*, and the  
 acts of a protestant legislature demanding the redundant and hu-  
 miliating declaration from Roman Catholics, that whenever they  
 swear, they do it in the plain and obvious sense and meaning of  
 the words *without mental reservation or equivocation, &c.*

BOOK III.  
 CHAP. VI.

Many authors have frequently confounded the oath of supre-  
 macy with that of allegiance or spoken of them, as if they had  
 been one oath. The difference of the two oaths, is strongly,  
 though not completely, represented by King James, who certainly  
 thought much, examined deeply and wrote tolerably fairly upon  
 these subjects. In his answer to Cardinal Bellarmine's letter, who  
 maintained the oath of allegiance to be unlawful for a Catholic  
 to take, the royal writer says \* “ For as the oath of supremacy

Effects of  
 the oaths of  
 supremacy  
 and allegi-  
 ance.

\* King James' Works, fol. edit. An Apology for the Oath, p. 263.



BOOK III. " was devised for putting a difference between papists and them  
 CHAP. VI. " of our profession: so was the oath, which he (the Cardinal)  
 " would seem to impugn ordained for making a difference  
 " between the civilly obedient papists and the perverse disciples  
 " of the powder treason. Yet doeth all his letter runne upon  
 " an invective against the compulsion of catholiques to deny the  
 " authority of St. Peter's successors and in place thereof to acknow-  
 " ledge the successors of king Henry VIII. For in King Hen-  
 " ry the eighth's time was the oath of supremacy first made:  
 " by him were Thomas More and Roffensis put to death, partly  
 " for refusing of it: from his time till now have all the princes  
 " of this land professing this religion successively in effect main-  
 " tained the same: and in that oath only is contained the King's  
 " absolute power to be judge over all persons as well civil as  
 " ecclesiastical, excluding all foraigne powers and potentates to  
 " be judges within his dominions; whereas this last oath con-  
 " taineth no such matter, onely meddling with the civil obedience  
 " of subjects to their sovereign in mere temporal causes."

King James  
 right in his  
 opinion of  
 the oath of  
 supremacy.

The royal controversist says rightly, that the oath of supremacy was intended as a distinctive test of the Roman Catholic religion; but he certainly gave not to the words of the oath their full and obvious meaning by confining their import to the Sovereign's power and right of *judging all persons as well civil as ecclesiastical*: that such was and is nearly the general effect of the statutes I readily admit: but that this meaning can be given



to the oath, which must be interpreted by every individual juror, who understands the general and obvious import of the English language, I must for ever deny. The sanction of the *animus imponentis* in the case of the negative part of the former, which is the whole of the present oath of supremacy, can justify no Roman Catholic in taking it with a safe conscience. For by it the imposers of the oath evidently mean to put the difference between Catholics and Protestants. And since all Roman Catholics have already sworn against the direct and even indirect temporal and civil power of the pope, it is undeniable, that the imposers of the oath of supremacy expect and intend, that something more shall be renounced by it, than is renounced by the late oath of allegiance: and this must render it absolutely unlawful for those to take it, who make profession of believing, that Jesus Christ gave a *spiritual* primacy of dignity and jurisdiction to St. Peter and his successors over his church upon earth.

When the present oath of supremacy is brought under the unbiassed and stern judgment of an upright conscience standing at the awful tribunal of the Deity, I feel not too bold in defying the most liberal ingenious and elaborate interpreter of it, to pronounce, that by the obvious plain and necessary import of the words the juror does not deny the possibility of any spiritual authority or power of the keys, to which British Christians owe submission existing either in the pope councils or elsewhere out

The present oath of supremacy cannot be taken by a Roman Catholic.

of



BOOK III. of the civil jurisdiction of the Parliament of Great Britain. I  
 CHAP. VI. will admit, that a Protestant may lawfully take such oath, who professes to deny the primacy of St. Peter: but not a Roman Catholic, who professes to believe and hold it as a necessary term of communion with the Catholic church.

For these reasons I must essentially differ from an elegant modern writer upon these subjects \* who attempts to prove, that such "has been the legal acceptance of the oath from its enactment to the present day:" and who holding the lawfulness of the present oath thus interrogates his Roman Catholic brethren: "Why should we importune Government for a further redress of grievances, or complain that we are aggrieved, if the remedy be in our hands? One bold man, by taking the oath, may dissipate the whole charm of prejudice, and restore us the most valuable privilege of British citizens."

I hope it will have appeared to my readers from what I have already said, that the imposers of this oath of supremacy look upon the subscription to it as an actual renunciation of the Roman Catholic faith, and that the plain and necessary meaning of the words of it imports an absolute renunciation of a religious tenet, which is holden by the Roman Catholic church as an essential term of communion with her.

\* Mr. Berrington's Introduction to the Memoirs of Gregorio Panzani, p. 11.



In saying this, I must also add, that if the oath of supremacy were so worded as to be perfectly consonant with the laws, which establish the supremacy of the sovereign, few persons either Roman Catholic or others would be under any conscientious obligation of refusing it. In order to prove this, I must recall the attention of my reader to the consideration of the first positive part of Queen Elizabeth's oath of supremacy.

BOOK III.

CHAP. VI.

The oath and  
law at vari-  
ance.

The existing laws of England acknowledge no supreme right power or superiority in the sovereign over the church of England independent of parliament: nor do they give or affect to give to the sovereign any particle of that *spiritual* power or jurisdiction, which by divines is called the *power of the keys*. In fact the laws give to the King no other than a supreme executive magistral power over such things, as constitute the *civil* establishment of religion within this realm, and which cannot be enjoyed or exercised by clergymen or others in this realm without the concession or sufferance of the state or *civil power*. To prove these assertions we must proceed upon legal and constitutional grounds. The opinions of many great and learned men of former times are against me: and I expect not to be without opponents from amongst my contemporaries.

Effect of the  
laws by which  
the supre-  
macy is esta-  
blished.

It is the doctrine of our courts of law that \* "an act of parliament cannot alter by reason of time, but the common law

\* Viner's Abr. vol. xix. Stat. p. 513.



BOOK III. "may." And the great constitutional lawyer Sir Matthew Hale  
 CHAP. VI. says \*, "In a point of common law, the repeated resolutions of  
 Interpretation of the law which estab-  
 lishes the supremacy. "the judges is the only way to know what the law is: but when  
 "the question arises upon an act of parliament, that is to be the  
 "rule for courts of justice to go by, of which they are to judge  
 "according to their own reason and understanding, and are not  
 "in such cases tied down by former determinations any further  
 "than the reasons or arguments thereof appear conclusive, for  
 "*judicandum est legibus non exemplis.*" This applies to all those  
 cases, in which the legislature has left the interpretation of the  
 law open to those, who are to observe or enforce its observance.  
 But where the legislature has itself undertaken to interpret the  
 law, that very interpretation becomes a law itself and is therefore  
 definitive. I always speak within the line of competence of the  
 civil power. Let us then see how far the legislature has inter-  
 preted this first part of the oath of supremacy, which was in-  
 tended and supposed to express the seventeenth and eighteenth  
 articles of the act which prescribes the oath.

Elizabeth's  
 injunctions  
 about the  
 oath.

In the very year, in which that act passed, the queen by virtue  
 of her *spiritual* or *ecclesiastical* supremacy published a body of in-  
 junctions, comprising rules of discipline and general order, which  
 was but a renewal (*with very little variation* †) of those given by  
 king Edward at his first coming to the crown: to which was an-

\* Hale, P. C. part i. 122.

† Burnet, Hist. Ref. part ii. p. 398.



nexed an *admonition* or explanation of the oath of supremacy to the following effect :

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CHAP. VI.

“ The queen’s majesty having been informed that, in certain  
 “ places of this realm, fundry of her native subjects being called Elizabeth’s  
admonition.  
 “ to ecclesiastical ministry in the church, be, by sinister persuation  
 “ and perverse construction, induced to find some scruple in the  
 “ form of an oath, which, by an act of the last parliament, is pre-  
 “ scribed to be required of diverse persons, for the recognition of  
 “ their allegiance to her majesty, which certainly was neither ever  
 “ meant, nor by any equity of words or good sense can be thereof  
 “ gathered: would that all loving subjects should understand, that  
 “ nothing was, or is, or shall be meant or intended by the same  
 “ oath, to have any other duty, allegiance or bond required by  
 “ the same oath, than was acknowledged to be due to the most  
 “ noble kings of famous memory, king Henry VIII. her ma-  
 “ jesty’s father, or king Edward VI. her majesty’s brother. And  
 “ further, her majesty forbiddeth all manner her subjects to give  
 “ ear or credit to such perverse and malicious persons, which  
 “ most sinisterly and maliciously labour to notify to her loving  
 “ subjects, how by the words of the said oath it may be col-  
 “ lected, that the kings or queens of this realm, possessors of the  
 “ crown, may challenge authority and power of ministry of di-  
 “ vine offices in the church, wherein her said subjects be much  
 “ abused by such evil disposed persons. For certainly her majesty  
 “ neither doth, nor ever will, challenge any other authority, than



BOOK III. " what was challenged and lately used by the said noble kings of  
 CHAP. VI. " famous memory, king Henry VIII. and king Edward VI.  
 " which is and was of ancient time due to the imperial crown of  
 " this realm ; that is under God, to have the sovereignty and  
 " rule over all manner of persons born within these her realms  
 " and dominions and countries, so as no foreign power shall, or  
 " ought to have any superiority over them. And if any person,  
 " that hath conceived any other sense of the form of the said oath  
 " shall accept the same oath with this interpretation, sense, or  
 " meaning ; her majesty is well pleased to accept every such in  
 " that behalf as her good and obedient subjects, and shall acquit  
 " them of all manner of penalties contained in the said act, against  
 " such as shall peremptorily or obstinately refuse to take the same  
 " oath."

Parliamen-  
 tary confir-  
 mation of the  
 admonition.

This explanation of the queen's own spiritual power by re-  
 ference to that of her father and brother was little satisfactory :  
 it tended no way to remove the difficulties and objections against  
 their power, which pressed hard upon the consciences of many  
 persons. No one could suppose for an instant, that she aimed  
 at larger powers than her predecessors, as she had dropped the *title*  
 of *head* of the church, which none thought applicable to a wo-  
 man. Yet in that sense, in which it was inapplicable to her  
 as a woman, it was precisely and equally inapplicable to a king as  
 a civil or lay person not partaking of the *power of the keys*. This  
*regal* explanation of the oath in the next parliament, (A. D.

1562).



1562) the legislature confirmed in the following words \*: “ Pro-  
 “ vided always that the oath expressed in the said act made in the  
 “ said first year, shall be taken and expounded in such form, as is  
 “ set forth in an admonition annexed to the queen’s majesty’s in-  
 “ junctions published in the first year of her majesty’s reign :  
 “ that is to say, to confess and acknowledge in her majesty her  
 “ heirs and successors none other authority than was challenged  
 “ and lately used by the noble king Henry VIII. and king Ed-  
 “ ward VI. as in the said admonition may more plainly appear.”  
 If to any person it appeared that Henry or Edward had attempted  
 to break in upon the apostolical mission and power of the keys,  
 this legislative interpretation strengthened and confirmed the ob-  
 jections and difficulties against that oath, which went to acknow-  
 ledge the same right in all future sovereigns.

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The last and definitive interpretation of this act and the oath  
 of queen Elizabeth was made by the archbishops and bishops of  
 both provinces and the whole clergy in the convocation holden  
 at London in the year 1562, in which the thirty-nine articles of  
 the Protestant religion were framed; the thirty-seventh of which  
 is to the following effect :

Interpreta-  
 tion of the  
 act by the  
 convocation  
 in 1562.

“ The king’s majesty hath the chief power in this realm of  
 “ *England*, and other his dominions, unto whom the chief go-  
 “ vernment of all estates of this realm, whether they be eccle-

\* 5 El. c. i. sect. 14.

“ *fiastical*



BOOK III. "fiastical or civil, in all causes doth appertain, and is not, nor  
CHAP. VI. "ought to be subject to any foreign jurisdiction.

"Where we attribute to the king's majesty the chief govern-  
ment, by which titles we understand the minds of some slan-  
derous folks to be offended; we give not to our princes the  
ministering either of God's word, or of the sacraments, the  
which thing the injunctions also lately set forth by *Elizabeth*  
our queen do most plainly testify: but that only prerogative  
which we see to have been given always to all godly princes  
in holy scriptures by God himself; that is, that they should  
rule all estates and degrees committed to their charge by God,  
whether they be ecclesiastical or temporal, and restrain with the  
civil sword the stubborn and evil doers.

"The bishop of *Rome* hath no jurisdiction in this realm of  
*England*."

Parliamen-  
tary confir-  
mation of the  
articles.

Whatever effect these articles so made and published by the  
convocation might be supposed to have in binding the laity,  
(which according to lord Hardwicke was none) yet the parlia-  
ment has (as far as a civil legislature can) approved and con-  
firmed this interpretation by enacting \*, "that every priest shall  
subscribe the said articles, that the maintenance of any doctrine  
against any of them shall be cause of deprivation, and that

\* 13 El. c. xii.



“every person admitted to any benefice with cure shall within  
 “two months after his induction publicly read the said articles  
 “in the church whereof he shall have cure in the time of com-  
 “mon prayer there, with declaration of his unfeigned assent  
 “thereunto.”

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 CHAP. VI.

Under these acts and legislative declarations and explanations of their meaning, I hold myself obliged to maintain, that his present majesty as king of Great Britain has by virtue of the supremacy over the church of England allowed to him by the laws of the land, no participation whatsoever in the spiritual power or jurisdiction given by Christ to his apostles to instruct and govern his church upon earth: but that he has the same power of coercion and punishment over each of his ecclesiastical subjects as he has over all others: that is, as the articles express it, he may  
 “rule all estates and degrees committed to his charge by God,  
 “whether they be ecclesiastical or temporal and restrain with the  
 “civil sword the stubborn and evil doers.”

When therefore in my *Jura Anglorum* (p. 293) I said, that perhaps few Roman Catholics would refuse to take the oath of supremacy, in the true constitutional sense of its actual existence, were it unequivocally to express, that the king is the supreme head of the civil establishment of the church of England; I meant, as I still do, to shew that the deviation in the words terms and intent of the oath, from the words spirit and effects of the laws,  
 rendered

Unlawfulness  
 of the oath to  
 a Roman Ca-  
 tholic.



BOOK III.  
CHAP. VI.

rendered it unlawful for a Roman Catholic to take it. I then conceived (as I still do) no vain hope that parliament would see and correct so important a defect, which operates the most severe cruelty and hardship upon millions of well disposed able and loyal British subjects.



## A P P E N D I X.

*Of the Spirit of Temporizing. Of the Declaration of the Gallican Clergy  
in 1682. Of the Inquisition.*

I HAVE now to the best of my ability endeavoured to throw light upon every question, that involves the source existence and exercise of *spiritual* or *ecclesiastical* and *civil* or *temporal* power with reference to the British constitution. The same motives, which induced me to take this subject in hand demand of me some observations upon subjects that will throw eclairessment upon the general system, though they do not immediately affect the government laws or constitution of Great Britain, to which alone I have endeavoured to adapt it. These observations will apply first to certain incidental circumstances arising from the spirit or humour of the times within the country, and secondly to some matters completely foreign from England and Englishmen. Our attention will be then first called to examine the effects

*Of the Spirit of Temporizing.*

I AM far from intending to enter into the extensive range of matter, Spirit of temporizing. which this general title may seem to announce. I shall strictly confine myself to such circumstances as I conceive relevant to the subjects of the foregoing books. These have been an earnest and I hope unbiased attempt to develop the truth by the removal equally of every rust or varnish that may have concealed the real object from the view of the impartial investigator. By the word *temporizing*, I mean a *passive* influence upon the human mind, by which men are impelled, often imperceptibly, to adapt their principles and direct their actions to the



prevailing spirit of the day. I see it generally as an involuntary affection of the mind, produced by some cause, which has first subdued it or rendered it for the time incapable of its freedom of deliberation and deprived it of its wonted energy and vigor in action. Various are the causes which operate this effect. Pride, joy, success and prosperity, alarm fear revenge and despondency: the intrigues flattery and seduction of others, the weakness blindness and perverseness of ourselves. It is not the isolated affection of one human individual but the gregarious quality of a whole society. To prevent it absolutely at all times is a moral impossibility: to check it at any time is a matter of unmeasurable difficulty: to correct it before disaster works the cure is the most honourable though unthankful office of the lover of his country.

Causes and  
effects of this  
spirit.

The *spirit of temporizing* essentially militates against discussion and investigation: if it be produced by real danger they become useless; if by design, they defeat their own end: thus by the violence of an impetuous torrent, the struggling efforts of truth are overpowered: her voice is drowned and her very being is borne away undistinguished from the angry and turbid stream. To assert, is to demonstrate, that man can only morally err by deviating from truth: for truth is nothing else than moral rectitude. It is the first emanation from the Divinity unto mortals: or rather the Deity is transcendently and exclusively truth itself. Every attempt or design then to suppress disguise or divert from truth, is an impious effort of rebellious man against his Creator, which no situation, no season, no circumstance can justify or even palliate. We have but one line of communication with the Divinity, and that is the straight line from the heart to the centre of the Godhead. Every point that deviates from this direction departs from God. So participating of its divine origin is truth, that it admits of no degrees of rectitude: but falsity diverges from the sacred line into endless and indefinite deviations. Human reason is the sole mean, by which man is enabled to move in the direction of truth: and discussion is the use or exercise of reason. To  
check

Discussion  
and truth.



check or punish discussion therefore is an immediate attempt to wrest from man the very means, with which God has supplied him, to discover what he has obliged him to follow. What reflection then are we to make, when we behold a man like Mr. Burke irradiated with the choicest gifts of nature, with every improvement of industry and science, lamenting that \* “it has been our misfortune and not the glory of this age, that every thing is to be discussed.” From this reluctance or horror of discussion have immediately proceeded all those suppressions misrepresentations and denials of truth, with which the latter temporizing works of this brilliant and enlightened author are replete. I have elsewhere noted many of them †. I still think, as I hope I ever shall, ‡ that *truth courts investigation and lives by discussion.*

No change of circumstances can by possibility convert true into false principles. Their truth essentially consists in their conformity with the will of an immutable and all-perfect Being; which quality they must for ever necessarily retain. The revolutions and convulsions of governments, the abuses or excellencies of monarchies or republics, the prosperity of the wicked or depression of the just can effect no alteration in the truth of the first principles of our constitution, that all power originates immediately from the people, that the subject's obligation of obeying is commensurate with the sovereign's right of commanding: and that the known law of the land is the common measure of both. Whether France continue to bow to the arbitrary commands of a despot or single master, or rise in wild and cruel assertion of unbridled liberty: whether England infected by the contagion incline towards this pruriency of freedom, or affrighted by the example fly into the treacherous hold of arbitrary power; yet still these constitutional principles are equally true: and consequently are

Immutability  
of truth.

\* Reflections on the Revolution of France.

† Vide my *Jura Anglorum*, and introductory chapter of the History of the Last Twenty Months.

‡ *Jura Anglorum*, p. 48.



equally to be followed. Neither the follies vices or misfortunes of our neighbours, nor the abuses corruption or violence of ourselves can change the title of his majesty to his throne by making him hold it by any other tenure than the free will and consent of a free people. So neither can a popular representation of the people be kept up but by members freely chosen and freely voting. A departure from the truth of any of these principles is essentially a deviation from moral rectitude, which man ought therefore to resist.

Instances of  
temporizing.

It would be endless to collect all the inconsistencies and errors, that many respectable men have been driven into by this spirit of temporizing. Doctrines, which the sound sense of the most enlightened century of the English history had exploded or condemned, are now revived, as the true principles of the British constitution. The toryism of Mainwaring \* and Sacheverell † we find revived in the Sermon of the

\* Roger Mainwaring in 1628 was *severely* censured by the house of commons for having maintained amongst other things in two high flying seditious sermons entitled *Religion and Allegiance*, “that the king is not bound to observe the laws of the realm concerning the subjects’ rights and liberties: but that his royal will and command in imposing loans and taxes, without common consent in parliament doth oblige the subjects’ conscience upon pain of eternal damnation. That those, who refused to pay the loan offended against the law of God and the King’s supreme authority, and became guilty of impiety disloyalty and rebellion, &c.” The judgment of the lords against Dr. Mainwaring was, 1. Three years imprisonment;—2. A fine of 1000l. to the King;—3. That he should make submission and an acknowledgment at the bar of the house of commons for his offence;—4. Three years suspension from the exercise of the ministry;—5. Inability of any ecclesiastical dignity or any secular office;—6. A prohibition to preach at court;—7. His book to be burnt. Dr. Mainwaring made a very full and explicit submission at the bar of the house of commons. It is to be observed, that in the fourth article of the judgment, the house of lords was very properly attentive to the rights of the *civil* power and to those of the *spiritual*; and therefore this part of their judgment was only commendatory to that power, which could alone interfere with the administration of the word: they therefore subjoined to this article the following words: “This



the Bishop of St. David, and the exertions of his temporizing zeal remunerated by translation to the see of Rochester. Another divine's † still warmer toryism remains hitherto unrewarded, though he publicly lament the demise of the long exploded doctrines of *jure divino* and indefeasible right to the crown, and the divine institution of monarchical government for man. "Government," says he, "is all divine; divine in its origin, divine in its energies." And "monarchy therefore is the primary, the natural the divine form of government for man." He further tells us, that "Mr. Locke, in the whirl of his bewildered ideas renders the erection of any government upon his own principles of the people absolutely impossible." He sets out indeed by assuring the public, "that his arguments were more familiar to the nation eighty or ninety years ago than they are at present." This brings us to Dr. Sacheverell's days. "They were then pressed upon the public with great success. May they meet with equal success now!" Of the fate and success of Dr. Sacheverell even Mr. Burke has spoken fairly under the impulse of this temporizing influenza. § "The impeachment of Dr. Sacheverell was undertaken by a whig ministry and a whig house of commons; and carried on before a prevalent and steady majority of whig peers. It was carried on for the express purpose of stating the true grounds and principles of the revolution, what the commons emphatically

"This suspension and provision to be done by the ecclesiastical jurisdiction." A pointed confirmation that my observations upon the nature and extent of the spiritual power are emphatically congenial with the laws of England.

† The judgment of the house of peers against Dr. Sacheverell's famous sermon against the revolution principles and in favour of passive obedience and non-resistance is too well known to be particularised.

‡ The real Origin of Government by John Whitaker B. D. Rector of Ruan Lanyhorne, Cornwall, 1795. This publication bespeaks a man of great erudition, a very brilliant mind, and a warm wish to serve his country. The aberration of such men from the first principles of the British constitution is the surprising effect which this spirit of temporizing produces.

§ Appeal from the New to the Old Whigs, p. 54, 55. Vide *Jura Anglorum*, 183, 4, 5, 6, &c.



“ called their foundation. It was carried on for the purpose of con-  
 “ demning the principles, on which the revolution was first opposed,  
 “ and afterwards calumniated, in order by a judicial sentence of the  
 “ highest authority to confirm and fix whig principles, as they had  
 “ operated in the resistance to King James and in the subsequent  
 “ settlement.”

Liability of  
 Englishmen  
 to this disorder.

This pernicious spirit of temporizing, which is engendered by popular fear, is the most contagious of all epidemic disorders. The unfortunate malady prevails more in England than elsewhere. It is indeed observable, that an Englishman is a hero at the face of real and a coward at that of imaginary danger. The shadow affrights him, more than the reality. Hence it is, that the nation so often has recovered and rallied by its own energy from the most desperate situations, into which in the height of her delirium she had been plunged: and probably from such observation, did Swift say, that Englishmen could feel, but could not see: and that they never made any good laws, till some dreadful calamity impelled them to it. We unfortunately at present stand in need of all our energy: and it is high time to be cured of our phrensy. But it is to be dreaded, that the views of those, who first raised the disorder are still interested in preventing the cure: for it has been truly observed \*, “ They that start the first cry of fear have  
 “ always the least of it. No: the first founders of those popular  
 “ frights know better: they are those, that dress up the bugbear, not  
 “ those that tremble at it. The cheat lies on the first discoverer’s  
 “ side. For to use the sacred words of Majesty on this occasion, these  
 “ false appearances of impending dangers, that create all those nation-  
 “ al terrors, are a scheme of art and invention in the first publishers  
 “ of them to *cover designs of their own.*” However dark or wicked these may be, nevertheless when the cry is once raised, men of honor integrity patriotism and virtue are but too frequently drawn into the

False alarms  
 dangerous to  
 the nation.

\* Fears and Dangers fairly displayed, being a New Memorial of the Church of England, p. 1, 1706.

delusion:



delusion : and in proportion to their sincerity in abetting and forwarding these masked designs, is their readiness to sacrifice their opinions and sentiments to the wishes or commands of their seducers. Hence the discussion of truth becomes invidious, and the publication of it an act of temerity : the love of liberty is rendered suspicious and dangerous ; whiggism is disavowed, the very slightest commendation of the Revolution of 1688 falls but little short of sedition ; and every effort or exertion to improve the representation in the House of Commons a treasonable attempt to overturn the government of the kingdom. When abuses of government are at the highest, is this temporizing fever in its paroxysm. Thus we see, that upon the eve of the Revolution viz. in 1678, the Court cry against the maintainers of the constitutional rights of British subjects was, that it was only a fresh attempt to introduce republicanism under the specious pretext of reform. Many publications \* were at that time made to prove this assertion. Yet the Revolution took place, and the British constitution has been since more secure from annihilation, by how much more closely that revolutionary establishment has been adhered to. God send, that the present foreboding and reluctance to be reminded of that revolution, prognosticate not a peccant tendency in the nation, to bring forward the necessity of another ! Whigs then were, as they now are, represented *rebels* to the state. The sentiments and feelings of this nation at the eve of the Revolution are so similar and congenial with the present, as not to permit me to pass them over wholly unnoticed, although the scope of this Appendix will not allow me to develop the subject in full and minute detail. It is a known fact, that urgent as are the reasons for repealing the Test Law, and thereby enabling Roman Catholics both British and Irish to serve their country by land and sea, the

Spirit of the court party before the Revolution of 1688.

Whigs represented as rebels.

\* One of these publications carries upon the face of its title the whole spirit and tendency of the work, which is contained in a small quarto, printed in 1678. It is intituled " An Account of the Growth of Knavery under the pretended Fears of Arbitrary Governments and Popery, with a Parallel betwixt the Reformers of 1677 and those of 1641 in their Methods and Designs."

pretence



Prepossessions  
against pro-  
testant dissen-  
ters as sedi-  
tious.

pretence for refusing the repeal is, that it will remove disabilities from the Protestant Dissenters, whom it now is, as it then was the fashion to look upon as enemies to the State. In a short publication in the year 1680 \*, I find, that the author puts the following account of the general spirit of the nation at that time into the mouth of the jesuit Sir John Warner: "The people were taught that *rebel* and *presbyterian* were synonymous terms, and that it was impossible to be a dissenter from the ceremonies of the church, and not be factious and seditious, although they have no dependance one upon another. In the universities the youth were taught to look upon those, as the worst of men, who would not come up to every tittle of what Laud in the late King's reign would have introduced. Nay they went so far, as that some of the dignified clergy told the world in print, that to reject any of the enjoined forms or ceremonies was a greater sin, than to commit the greatest immoralities. Nor were they content to represent these as the worst of villains, unless they made them the greatest fools too. And therefore the most scurrilous pens were chosen out to dress them up in as ridiculous a sort, as they could devise." A calm and unbiaffed observer of the present scenes will certainly discover a spirit not very dissimilar from this, acting upon a large part of the nation at this hour: and this I call the *spirit of temporizing*.

I wish I had not reason from my Reverend Correspondent's exultation † at the continuance of the penal law of king William against

\* A Relation of two Free Conferences between Father La Chese and four considerable Jesuits touching the present State of the Affairs of the Romanists in England &c. These four Fathers were Sir John Warner, Sir Thomas Preston, Conyers and Warren. I undertake not to answer for the authenticity of the book. I will even suppose it written *ad invidiam*. Yet as it speaks of a spirit and disposition then prevailing in the nation, we must give credit to the existence of such spirit, though we may differ from the author as to the reasonableness of it.

† In his proscript p. 229.

the



the Unitarians and from many similar instances, which I blush to avow, to conclude, that several Roman Catholics at present prefer suffering under the pressure of the Test law, than to have it removed from the necks of their Protestant dissenting brethren. Not a little of this sort of *temporizing spirit* may be remarked from a speech of Father Conyers in this same supposed conference. “ ’Tis necessary to make the fanatics as odious and as much suspected as we can, and I see very well how useful it would be to us, if we could revive the prosecution of the laws against them. But I also know, that though such a prosecution would be very acceptable to a great part of the clergy and the old cavaliers, who felt the late war, and who will never think they have sufficiently revenged themselves, yet it would be far from being pleasing to the body of the nation who, though they are not dissenters, yet are moderately inclined. The latitudinarian opinions having of late very much prevailed amongst them, especially if they observe, that at the same time, when all this severity is used against protestants, all the penal and sanguinary laws against us, shall be laid asleep, the prosecution of the plot shall cease. The Lords in the Tower shall remain untried. The Duke (of York) shall return to Court and the Catholics more than ever resort thither and be kindly looked on there.” Nothing can so effectually direct the measures of a prudent minister to the welfare of the State, as a close attention to the effects, which similar measures have produced in similar circumstances. Human nature is always uniform in her operations. *Semper eadem*. Causes may be discovered from effects, as well as effects from causes. All correlatives act reciprocally. And as much may be often proved *a priori*, as by the plainest argument *a posteriori*. I judge as conclusively from the present symptoms of the nation, that there exists an intent or wish to extend the regal power beyond the constitutional limits of its boundary, as I could prove from the extinction of the title of the Stuarts, that similar intents and wishes brought about the Revolution of 1688\*.

With

\* This uniform operation of human causes is most admirably displayed in a



Contradiction an effect of temporizing.

With reference to several material parts of the foregoing work, I cannot omit to observe some still more unaccountable effects of this *spirit of temporizing*. It appears not only to have led men of veracity knowledge and acuteness from the line of truth, but to have plunged them into an abyss of contradiction, and strange to say, rendered them insensible of their inconsistencies. No otherwise can I account for the contradictions, which appear in a recent work, published last year, intituled, *Remarks on a Book entitled "Memoirs of Gregorio Panzani," by the Rev. Charles Plowden, preceded by an Address to the Reverend Joseph Berrington—Liege*. Both these authors are deservedly in high estimation for their writings amongst those, to whom they are known. And yet, I read in them both with equal pain the sarcastical representations of the sufferings of some of their Roman Catholic ancestors under an heroic firmness to the cause, they thought just, and the unfounded boastings, that none of them were justly punished by the State. It is to be lamented, that these delicate topics should be fastened to the rack of polemical rancour. But truth and justice demand of me a repetition of the avowal, that the legislature once had but too much reason to guard against the unconstitutional principles and attempts of some of our Roman Catholic ancestors. Some of their principles were dangerous: but these were political not religious. If they were religious, their successors could not abandon them. For the religion, which is maintained to be irreformable, cannot be supported upon

late publication intituled "A Query whether certain Political Conjectures and Reflections of Dr. Davenant in 1699 be or be not applicable to the present Crisis." The intuitive prescience of Dr. Davenant is a stupendous proof of the advantage of free and unbiassed discussion. He appears more to have delineated the present actors from the life, than to have argued *a priori* upon the operations of political systems. The nation is highly indebted to the judicious and patriotic editor, as he humbly calls himself, of these transcendently necessary truths, which should be almost a second bible to every lover of his country in this alarming crisis of danger from the prevalence of temporizing.

mutable



*mutable* principles by those, who hold it to be irreformable, as is self evident.

The advocate of the untainted rectitude and purity of our Roman Catholic ancestors civil duty and allegiance tells us (p. 147) "I, who have searched for the guilt of the first seminarists, through volumes of MS records and letters written by them have not yet discovered a trace, a symptom of any plot or contrivance to dethrone or destroy Elizabeth, in which the founders of the seminaries, or any of their friends or dependents had the smallest concern." And (p. 142) "I have never yet found a syllable, which could prove or indicate a plot, or the concurrence of any of them in any plot against the life or sovereignty of the Queen; and it is certain, that the instructions to them from Pope Gregory XIII required their civil obedience to the Queen and their public acknowledgment of her sovereignty." (P. 146) "The bitterest enemies of the seminarists, Lord Burleigh, Cambden, Watson the appellant, Berrington and Sir John Throckmorton are reduced to confine themselves to general imputations of treason: they cannot individuate a single fact." What however their enemies cannot do, their apologist does for them. And such is the general information, which appears to be possessed by the author of these remarks, that I know not how to presume him ignorant, that overt acts tending to depose the sovereign or interrupt the succession are acts of high treason by the laws of England.

Conduct of  
the Roman  
Catholic se-  
minarists and  
others.

With the most unaccountable inconsistency then in the first place does he assure us, that notwithstanding the instructions of Pope Gregory, *they* (Allen and his friends) *considered the unrelenting Queen Elizabeth as an usurper.* (p. 144.) This was no act of obedience to the Roman Pontiff, although they allowed him to be the great judge and arbiter of crowns and sceptres: nor does it warrant the boast put by this author into the mouths of the suffering priests of that day (p. 142) *that they had discharged every duty of civil allegiance.* Of Cardinal



Want of allegiance in Cardinal Allen.

Allen in particular he tells us, (p. 146) that “ he conceived himself “ authorised by acknowledged authority to declare enmity against “ her, whom he considered as an usurper, and to whose usurpation he “ solely attributed all his country’s grievances and distresses.” (P. 145) “ They conceived the sovereign to be subject to correction from the “ head of the church, at least for crimes such as Elizabeth had committed : and on these grounds, the execution of the bull of Pope “ Pius by Philip II. would in their estimation be a deed of eminent “ justice.” He then gives us (146) an account of a very rare treatise consisting of 60 pages in octavo dated from Rome April 28, 1588, intituled *An Admonition to the Nobility and People of England and Ireland concerning the present Warres &c.* in order to spirit them up to join the King of Spain, who was then about to invade this kingdom with his Invincible Armada for the direct and immediate purpose of executing the bull of Pope Pius for deposing Queen Elizabeth. When this attempt had failed, the party (*who*, we are assured, *had discharged every duty of civil allegiance*) did not lay down the principle, but awaited only a likely opportunity of carrying it into effect in some other manner. (P. 150) “ After the failure of the Spanish Armada, the utmost political efforts of Cardinal Allen, Parsons and their friends seem to have “ been directed to procure a Catholic successor to the Queen : and “ there is evidence from their letters, that to effect this, they endeavoured to engage the interest of the Pope and of other Catholic “ powers. Parsons had laboured ineffectually to secure the education “ of the Scottish king in the religion of his forefathers &c. When “ Parsons despaired of attaching him to the Catholic religion, he seems “ to have wished the exclusion of James, and amongst the possible “ competitors, to have hoped for success to the pretensions of the Infanta of Spain or the Duke of Parma. He repeatedly declares that he “ cares not, who possesses the throne, provided he be a Catholic \*.”

Attempts of feminarists to interrupt the succession.

Little

\* In his Appendix No. VIII. we are favoured with a copy of an original Letter written by Father Parsons from Genoa (March 15, 1597) to Father William



Little surely needs be said to prove, that to encourage the levying war against the sovereign in order to depose her, to attempt to interrupt the regular succession by placing a foreigner upon the throne of these realms to the exclusion of the rightful heir, were acts of the rankest high treason: and that it was the duty of the legislature to punish those, who attempted them, and to provide and guard against all such subjects, as should think such treasonable practices *deeds of eminent justice*. Were not these attempts and efforts *acts and contrivances of Allen and Parsons to dethrone their sovereign?*

Treasonable  
efforts of  
Allen Parsons  
&c.

To the effects of this temporizing influenza upon the mind of the author of such contradictions do I also attribute the suppression of truths, which I am to presume he well knew. The horror of Whiggism is the particular string, which affects the patient labouring under this degrading malady. It seems, that he had rather expose his heroes to the guilt of treason, than to the slightest tincture of Whiggism. The fact however was, that Bellarmine \* Allen Parsons and the rest of their school maintained some true principles of civil government, which since the revolution of 1688 have been called *Whig* and *Revolution* principles. "Though," said Sidney †, "the schoolmen were corrupt, yet they were neither stupid nor unlearned; they could not but see that which all men saw." And he says of his antagonist Sir Robert Eil-

'Temporizers'  
dread of  
whiggism.

liam Holt residing in Bruxelles, in which he says, "About the matter of the succession my meaning is to propose to his Holyness the true state of the case; how necessary it is for his Holyness to think seriously and speedily upon it, that after the death of the Queen, the government may not fall into worse hands: that the English Catholics only desire after her Majesty some sincere Catholic Prince without respect of English Scottish Spanish or other nation." But who this person is to be, he means to leave it to the Pope himself: though he says, "In my opinion no agreement would be more beneficial probable or easy, than in the person of the Infanta."

\* Singulæ species regiminis sunt de jure gentium. De Laicis, l. iii. c. 6.

† Alg. Sidn. Disc. con. Gov. sect. xi. p. 5.



mer and his followers: " This which hath its root in common sense, " not being to be overthrown by reason, he spares his pains of seeking any ; but thinks it enough to render his doctrine plausible to his " own party by joining the Jesuits to Geneva and coupling Buchanan " to Doleman as both maintaining the same doctrine: though he might " as well have joined the Puritans with the Turks, because they all " think that one and one makes two." These Fathers presuming, what once was the fact, that the majority of the nation wished for the establishment of the Roman Catholic religion, they took advantage of the true constitutional principles founded upon the will of the majority binding the whole, in attempting to bring about their wishes. For this very reason were the Jesuits so particularly obnoxious to king James, whose unconstitutional doctrines of exaggerated prerogative are even proverbial. Upon this principle was written Doleman on the Succession, as the author of the Remarks has fairly informed us (p. 152), " with a view, as a Letter of Parsons says, to open the eyes of the " nation to their main interest, to which the queen's policy forbade " them to attend. This book commonly attributed to Parsons was " the joint production of several. Cardinal Allen and Sir Francis " Englefield were probably amongst the principal compilers: and in " the several letters, in which Parsons mentions it, he calls it the work " of wise and good men, but he no where claims a share of it for " himself. This may have been a prudential reserve; and as I think " it probable, that he concurred with others in the composition, I take " it to be certain that he admitted and approved the principles and " sentiments, which the book delivers." Before this author \* had been so totally possessed by the overpowering *spirit of temporizing*, we trace fair symptoms of his manly firmness to truth, and in that work (p. 10)

\* Thus in his preface to his Considerations on the modern Opinion of Fallibility of the Holy See, he makes the proper stand for applying to parliament for relief against the pressure of the penal laws; " *they conceived it more suitable to the " dignity of conscious merit to speak a manly language and to demand equal protection as a " right, instead of suing for it as a favour &c.*"



he firmly asserts, what might naturally be presumed an effectual antidote against the prevailing malady. “*Times and circumstances change, but the truth of the Lord remains for ever.*” Whatever information or satisfaction the *Memoirs* and the *Remarks* may afford, it is to be lamented, that a vein of raillery and satire so strongly pervades them both, as to force, even from their most admiring reader, the judgment passed upon the Roman satirist,

Satire against  
the pro-  
motion of  
truth.

Sunt quibus in satyrâ videar nimis acer et ultra

Legem tendere opus.

I never as yet knew the refutation of error, or the conviction of truth effected by a stroke of satire.

To something not unlike to *this spirit of temporizing* in the early progress of the disorder must I also attribute in a late work \* some misrepresentations of facts, (not to enter into the arguments, for I avoid controversy) that relate to a subject not immediately connected with the object of this work, which has only reference to the British Constitution, but which is very analogous and relevant to all those principles of the work, upon which the direct and indirect *temporal* power of the pope over sovereigns is disclaimed even upon oath by British Catholics. Recent and important circumstances render more peculiarly necessary at this time some observations upon

*The Declaration of the Gallican Clergy in 1682.*

I AM far from proposing to enter into a defence of what are usually called the liberties of the Gallican church. It obviously follows from

\* The book to which I now refer was printed in 1790, and is intitled “*Considerations on the Modern Opinion of the Fallibility of the Holy See in the Decision of Dogmatical Questions, with an Appendix on the Appointment of Bishops.* By the Rev. Charles Plowden. *Scribam aliquid dignum lectione cupientium dogmata devitare Christiani nominis obumbratione fallentia.* S. Aug. in Pref. ad L. de Hær.”

what



Liberties of  
the Gallican  
church.

what I have said in the foregoing books, that no particular parts or divisions of the church of Christ can by possibility possess any right franchise or liberty, which is not common to every part or division of the church: in matter of belief, there can be no variance, where all equally hold unity of faith: in matter of obedience or submission, there can be no difference, special exemption or particular obligation, where all acknowledge a common father or one supreme bishop of the church, with which they hold communion. In matters of rights powers and jurisdiction, there can be no private claim or title set up by particular churches, when they are to be derived from one common source of apostolical succession to the whole Catholic church. Particular churches, which hold communion with one common center of unity can only differ then from each other by matter of ecclesiastical discipline, which as I have before observed is in its nature mutable, and is always adapted to particular exigencies and occasions.

No new in-  
vention or  
claim.

Far from me is the intent to discuss the truth and tendency of the declaration of the Gallican Clergy in 1682: I shall merely state their four propositions, because one of them emphatically expresses the necessary belief of all those British Catholics, who have renounced upon oath both the direct and indirect *temporal* power of the Pope. It is a common, though very erroneous assumption of many, that the liberties of the Gallican church were invented asserted and procured by the convocation of the Gallican clergy in 1682. Such in fact must be the persuasion of every one, who thinks upon this subject with the defender of papal infallibility. (P. 31.) “ You and the thirty-four French bishops, “ who without any canonical authority presume to establish a new system of things, are bound first to disprove the old system before you “ can reason from the new.” Whereas that declaration was no more, than an explicit avowal or statement of the principles and doctrine, which had ruled and directed the Gallican church upon the points in question from time immemorial, as the Gallican clergy maintained every other church ought to have been ruled and directed. Thus the small treatise, Of the Liberties of the Gallican Church, published by

Peter



*Peter Pithou* in the year 1594 sets out by informing us, that \* “ what  
 “ our fathers called the liberties of the Gallican church, and of which  
 “ they were so jealous, are no exemptions as exorbitant privileges, but  
 “ rather natural franchises or common rights: *Quibus* (as speak the  
 “ prelates of the Great African Council writing upon the subject to  
 “ pope Celestin) *nulla patrum definitione derogatum est ecclesie Gallicanae*:  
 “ and which our ancestors have very constantly maintained, and for the  
 “ establishment of which, they needed to shew no other title than that  
 “ of actual possession and natural enjoyment.” Without entering into  
 the history or occasion of the meeting or convocation of the Gallican  
 clergy in 1682, I merely state the four propositions which they de-  
 clared :

*Pithou's*  
 treatise of the  
 Gallican li-  
 berties.

1. The first of these propositions declares, that God gave power only  
 to St. Peter and his successors as his vicars upon earth, and to the  
 church itself over *spiritual* things belonging to eternal salvation and not  
 over *civil* or *temporal* things.

1st Gallican  
 Proposition.

2. The second expresses the submission to and approbation by the  
 Gallican church of the fourth and fifth session of the Council of Con-  
 stance, as having been approved of by the pope himself and confirmed  
 by the usage and practice of other popes and of the whole church, and  
 that they are of equal authority with the other sessions of that council,  
 and that their decrees operate at all times as well as in times of  
 schism †.

2d Propo-  
 sition.

3. The

\* *Commentaire sur la Traité des Libertés de l'Eglise Gallicane de Maître Pierre Pithou, &c. 1652, p. 1, 2.*

† There were three popes or antipopes at the time of this council, each of  
 whom the council deposed : and in the fourth and fifth session of this council  
 the power of the council is declared to be above that of the pope. The ultra-  
 montanists hold, that these decrees affect only times of schism, such as were those,  
 in which this council sat. But as an antipope is no pope, it was useless to de-  
 clare the council above him : it appears therefore evident, that the decree can



3d Propo-  
sition.

3. The third declares, that the power of the holy see is not arbitrary and absolute, but ought to be limited and regulated by those canons, which have been framed by the spirit of God and consecrated by the reverence of the whole universe: and that the rules customs and institutions and the terms of their predecessors, which had been received by the state and church of France were not to be infringed, and that it conduced to the greatness of the holy see, that all decrees and usages, which were confirmed by the assent of the holy see and the dispersed churches, should from thence acquire their force and efficacy.

4th Propo-  
sition.

4. The fourth declares, that in questions of faith the pope holds the principal part, and that his decrees extend to all and to every church: but that the decrees nevertheless are not an irreformable judgment, unless the consent of the church be joined to them.

Ultramonta-  
nists and cis-  
alpines.

Such are the four famous propositions of the Gallican church, upon which many folio volumes have been written with more erudition zeal and violence, than advantage prudence or edification. They have been uniformly combated by all ultramontane divines: and strenuously defended by their opponents, who are called cisalpine. It often happens, when particular terms are appropriated to the expression of doctrines or opinions, that the term generally imports something beyond the bare difference from one opinion, or the adoption of the other, which in fact gave rise to the denomination. I place it to the score of early and very groundless prejudice that many English Roman Catholics, reject the appellation or term *cisalpine*, though the generality of them have by their oath renounced the doctrines, which denominated their ancestors *ultramontanists*. Every man must see the extreme difficulty, with which the first impressions of education are at any future time counteracted or only apply to the power of a real pope, which of course must always be the same, in or out of schism.

even.



even loosened: and although in most particular cases plain sense and conviction have induced individuals to renounce the ultramontane doctrines, of which they had imbibed the early germs in the docile pliancy of youth, yet it appears no groundless apprehension, that a general *ultramontane* spirit has in too many instances survived the renunciation of *ultramontane* doctrines by particular individuals. An *esprit de corps* will generally supersede and control the firmest convictions of its particular members. Candor justice and truth require, when a person has solemnly avowed an opinion upon his oath, that he should neither retain the spirit of the renounced doctrine, nor commend others, whether ancestors or cotemporaries for their belief maintenance or support of error: and such must every doctrine be to him, who has renounced it upon oath. Disrespect raillery and ingratitude are always blameable: but warmth is generally inseparable from new opinions; for as these are necessarily the result of investigation and reflection, they are therefore the more warmly supported, by how much less lightly they were adopted. Although I highly prize the talents, revere the characters and venerate the virtues of Bellarmine Allen and Parsons, yet cannot I easily palliate nor justly excuse and much less commend or justify their erroneous doctrines of papal power over sovereigns and states: I see their falsity, shudder at their mischief, and bitterly lament their consequences.

Spirit of ultramontaniam still subsisting.

My Reverend Correspondent (I know not whether he have ever renounced the ultramontane doctrines upon oath) appears deeply immersed in the spirit of *ultramontaniam*: nor do I recollect a passage in his whole book, that Bellarmine might not consistently have subscribed. No wonder then, that any difference of opinion from these ancient supporters of *temporal papacy* should shock the pious feelings of their still devoted disciple, who tells us (p. 6) that many Roman Catholic authors within these last six years, “to their shame have thought, that there was no other method of exculpating themselves and their religion from the aspersions thrown out against them, than by inveighing

Ultramontaniam of my Reverend Correspondent.



“ against the memory of their \* venerable forefathers and spiritual  
 “ leaders of ancient days with more bitterness, than would suit the  
 “ phlegmatic reflections of a reforming philosopher of the present  
 “ times.” To the retention of a large portion of the *spirit of ultra-*  
*montanism* must I charge many assertions and observations of the mo-  
 dern defender of papal infallibility, which candor will not warrant and  
 which truth will not justify. The renunciation of the direct and in-  
 direct temporal power of the pope by the body of British Catholics  
 involves them specially in the maintenance of the first of the four pro-

\* This Reverend Author tells us in the same page, *that in reading the works of*  
*an author not so much the arguments of the writer have been considered, as the name of the*  
*university or college, where he had received his education.* I cannot help observing,  
 that the widest differences of opinion amongst the authors, of whom he speaks  
 are observable in those, who have been brought up in the same schools: which  
 proves, that party prejudices begin to give way to rational discussion and fair  
 conviction. I cannot therefore admit with him, that *the heats and animosities of*  
*different schools have been revived* (p. 6). It has ever appeared to me as unrea-  
 sonable to conceive a dislike contempt or enmity towards any other body of men  
 engaged in the common cause of the same religion, as it would be for a soldier  
 to encourage hatred and animosity against others, because they wore different  
 uniforms and served the same prince in separate regiments: there should exist  
 in all bodies of men an *esprit de corps* to create and feed emulation and zeal for the  
 common cause, in which they are all engaged. I mean neither injury nor offence  
 to others, when I pay the just tribute of praise to that society, from which I re-  
 ceived my education. I scarcely deem it possible for the powers of man to devise  
 a system more calculated to infuse solid learning and virtue into youth, than the  
 plan, which they pursued with unremitted ardor and perseverance. The many  
 faults and frailties, which with confusion I take to myself are so many direct de-  
 viations from the precepts and examples I had the advantage of receiving from  
 them. But if in some political principles or in some disputable points of theo-  
 logy, I now differ from the doctrines, which were heretofore generally taught and  
 believed by that body of men (as they were at the same time by all the other ec-  
 cleastical and religious bodies of our nation and persuasion) I attribute it to the  
 sound principles of investigation and the unbiassed rules of judging others, which  
 they instilled into my early youth.

positions,



positions, and the presence of some thousands of the venerable exiled clergy of France, who maintain them all, render some notice of this declaration peculiarly necessary, and appropriate to the existing circumstances of the day.

The author is so vehemently transported against this Gallican declaration, that he first quarrels with the very term *Gallican Church*. P. 4, "It is to us a term without meaning, a word without a corresponding idea, a mere non-entity. We know what is meant by the Anglican Church and the Greek Church: they are societies of Christians, who have broken the unity and have chosen for themselves schismatical heads. We again know what is meant by the Churches of Gaul, the Churches of Spain, the Parisian Church, the Lugdunensian Church. They are portions of the one Roman Catholic Church situate in France or Spain, and governed by particular pastors, authorised by and subordinate to the first and common pastor, head and bishop of the whole Church. But the appellation which suits single churches cannot with propriety be applied to a collection of churches existing within the geographical limits of a nation, unless this collection of churches should have a distinct pastor authorised by the Church, and subordinate to its chief pastor. This alone could form a number of churches into a hierarchical body and give them a distinct name. The French prelates seem not to have been aware of this important remark, when in 1682 they assumed the pompous title of *Gallican Church*."

Of the term  
Gallican  
Church.

I have before observed, that Pirhou published in 1594 the Liberties of the *Gallican Church*: these were largely commented upon in 1652 still under the title of Gallican Church: so that the prelates in 1682 cannot be said to have then assumed for the first time this title. If this author had looked at home, he would have found that the churches of England had no distinct pastor authorised by the Church to form them into an hierarchical body and give them a distinct name; and yet for many

Church of  
England.



many centuries before the *Anglican Church*, as he calls it, had separated from communion with the Church of Rome, it was always termed in the bulls of the Popes and in our own acts of parliament *Ecclesia Anglicana* or *Anglorum*, without importing any disunion or schism from the Catholic Church.

Thus says the venerable Bede in the 4th chapter of his History (A. D. 610), that Melitus the bishop of London went to "Rome to treat with Pope Boniface about necessary business of the Church of England, *De necessariis Ecclesiæ Anglorum causis tractaturus.*" Magna Charta (A. D. 1225) holds the same language, "*Quod Ecclesia Anglicana libera sit.*" I know of no author ancient or modern, so orthodox in his terms as to satisfy this author\*, by speaking of the churches of London York Carlisle Hereford, &c. This marks the

\* I am aware that the author has appeared to qualify his objections against the term Gallican Church by introducing them under this salvo, "In questions that regard faith or preliminaries of faith, such as is the power of the church in matter of dogmatical decision, &c." I answer in the first place, that the case is unfairly stated; he should have said, such as the power of the Pope (not of the Church) in matter of dogmatical decision. Secondly, The whole matter, upon which the *Gallican Church* made their declaration regarded not faith: for our author himself says, p. 21, that "in case of need, he would readily subscribe that infallibility in the Holy See is not a decided article of Catholic faith." Thirdly, *Preliminaries of faith* is so vague and extensive a term, that I can place no boundaries round it, besides the conscientious duties and obligations of all Christians with reference to the *spiritual power*, to which they are subject. Such must have been the *necessariæ Ecclesiæ Anglorum causæ*, which Melitus went to Rome to settle: and such must necessarily be all those matters, which the Gallican church did not receive either as commands directions or advantages from the State. If we look up to the Pragmatic Sanction made at Bourges by Charles VII. A. D. 1439, and to the Concordate, entered into at Bologna by Pope Leo X. and Francis I. A. D. 1515, and indeed to the whole ecclesiastical history of France since the establishment of their monarchy, we shall have no reason to upbraid the *French prelates* in 1682 for having assumed the pompous title of *Gallican Church*.

spirit,



spirit, with which the author undertakes the discussion of the truth of the question before him; which being purely theological I systematically avoid; but his assertions of fact are of a nature not to be passed over in total silence.

Page 8. "The King demanded from his bishops the famous declaration, of which he did not discern the consequences, and the bishops, who yielded easy compliance, thought proper to dissemble them to themselves. Every prince, says he, is bound to enforce the decisions of the Catholic Church in doctrinal matters, because all kingdoms on earth exist only to form the great kingdom of Jesus Christ: but no prince has a power to enforce as a law and as an article of universal doctrine the opinion of only a few national bishops, especially if he himself be the promoter of their declaration, and this declaration contain sentiments contradicted by the bishops of all other nations in communion with the See of Rome. This was precisely the case in France in 1682 \*. P. 9, To mortify the Pope was the object steadily held in view. Every plume plucked from his tiara, was deemed a decoration to the episcopal mitre. The King was exasperated, and the prelates assumed his passions. P. 11, The modern bishops of France would not decide, as their predecessors did, but still they suffer that decision to subsist. Their station, much more than their conviction closes their mouths. We do not assert this without reason, and as a proof of it, we add, that the French prelates, and even Louis XIV. himself, when their passions were hushed, were ashamed of the rash decision, and by their own free act destroyed all the force and efficacy, with which they had

Unfair representation of the Gallican synod in 1682.

\* The author's attributing this declaration of the clergy of France to a variance between Louis XIV. and Innocent XI. is to me inexplicable: for I can see no reason why contending parties may not be as right in the incidental effects of their quarrel, as they were in the original cause of it, and he himself owns that it appears, that Louis *was right in the main question, which was at issue between him and the Pope*, p. 8.

"pretended:



“ pretended to vest it. P. 13, Though the doctrine of the declaration has been adopted by several Catholic schools in France, it has been violently supported only by the abettors of the Jansenist party.”

Whoever gives credit to these and other such-like assertions concerning this declaration of the Gallican clergy, must necessarily entertain a very despicable, if not worse opinion of those, who maintain the truth of it: he cannot in fact believe, that it had ever been submitted to or subscribed in France since the year 1682, if he believe, what this author says, that the French monarch and the French prelates “ had by their own free act destroyed all the force and efficacy “ with which they had pretended to vest it.” I am called upon by the principles, upon which I have written this work, to meet these assertions, which I see teeming with unusual mischief.

Respectability of the Bishops convened in 1682.

To establish the respectability of the French prelates convened in 1682, let their opponents' testimony suffice. P. 10, “ It is undoubtedly “ the agreement of thirty-four respectable Bishops, and the Archbishop “ Harlay and the great Bossuet were at their head.” I flatter myself, that it will evidently appear from the contents of the foregoing books, that the enforcing of the decisions of the Catholic church in doctrinal matters, which necessarily must concern the Christian revelation, is out of the resort of the civil magistrate: for the establishment of Christianity made no change in his rights duties or obligations: they still remain as St. Paul described them in the heathen magistrate. And although it be true, that the great end of man is the salvation of his own soul, and that the Christian revelation points out the necessary means of attaining that end; yet is it not true, *that all kingdoms on earth exist only to form the great kingdom of Jesus Christ.* This has its origin and means of subsistence independent of all the governments upon earth: for they still exist, as they did before the Christian revelation or the establishment of *the great kingdom of Jesus Christ upon earth*



*earth* to preserve peace unity and order amongst men, which are requisite to keep up that state of society, for which God created them in this world. It is a false and mischievous insinuation or assumption, that Louis XIV. enforced as a law and *as an universal doctrine the opinion of only a few national bishops contradicted by the bishops of all other nations in communion with the See of Rome.* The King's promotion of the declaration could evidently neither weaken nor strengthen the truth of it. If it involved matter of divine faith, then the contradiction of it by all other bishops of the Catholic church would indeed be conclusive evidence of its error: but the Reverend Author will himself *readily subscribe, that infallibility in the Holy See is not a decided article of faith:* and he knows full well, that the whole hierarchy of Ireland has done the same \*. He knows it then not to be true, that the declaration of the Gallican clergy concerning their reformability of papal decrees on dogmatical questions, is *contradicted by all the bishops of all other nations in communion with the See of Rome.* Although the opinion of the Ultramontanists were for a length of time pretty

Papal infallibility no article of faith.

\* It is contained in the Irish oath. Let us see how far Archbishop Troy in his pastoral letter agrees with this statement. "Many Catholics contend, that the Pope, when teaching the universal church, as her supreme visible head and pastor, as successor of St. Peter and heir to the promises of special assistance made to him by Christ, is infallible: and that his decrees and decisions in that capacity are to be respected as rules of faith, when they are dogmatical, or confined to doctrinal points of faith and morals. Others deny this, and require the expressed or tacit acquiescence of the church assembled or dispersed to stamp infallibility on his dogmatical decrees. Until the church shall decide upon this question of the schools, either opinion may be adopted by individual Catholics, without any breach of Catholic communion or peace. The Catholics of Ireland have lately declared, that it is not an article of the Catholic faith, nor are they thereby required to believe or profess, that the Pope is infallible without adopting or abjuring either of the recited opinions."

N. B. Archbishop Troy signed this declaration as well as others.



general in the Catholic church, it was far from ever having been universal: nor was the contrary doctrine merely confined to France; as it were easy, though too long to prove.

Bossuet's defence of the declaration of the Gallican clergy in 1682.

Notwithstanding the positive assertions to the contrary, it is notoriously true, that the edict of Louis XIV. obliging every licentiated graduate throughout the kingdom to swear to maintain defend and teach these propositions never was suspended, and much less repealed; and that from the time of its passing till the late expulsion of the orthodox clergy out of France the oath was administered and taken by every individual of that respectable body, that was promoted to any degree in any of their universities, or to any ecclesiastical preferment or dignity throughout that kingdom. The truth of the propositions was defended in a most learned and elaborate work \* by the great and virtuous Bossuet, whose noted zeal for the purity of the orthodox faith roused him equally against the devout quietism of the amiable and pious Fenelon, and the refined subtleties and errors of Claude and Jurieu.

When we reflect, that this warm supporter of papal infallibility seems to confine the earnest maintenance of the four Gallican propositions to the abettors of Jansenism, and speaks so emphatically of them as of innovations in Christian faith: p. 100, "These precautions were first called in aid in 1682, when the prelates influenced by the passions of their King were addressing to the faithful a language, which *their old masters and fathers in faith* had never held," I look round me and behold with awful veneration the sufferings of thousands of sworn maintainers of the truth of these very articles. Men, whose

\* This defence was written 13 years after the declaration, though never published during the life of the author: it is looked upon as unanswerable by all Gallican divines, and must be highly esteemed by such of his opponents, who may have the candor and liberality to read and judge of it impartially.

pious



pious and learned exertions in the cause of religion in this trying age of infidelity and impiety have brought upon them their sufferings and stamped them with the dignified badge of the most forward zealous and efficient workmen in the vineyard \*.

If from the uniform conduct of God's providence over his church, we observe, that against the most violent and dangerous persecutions, he has raised up the most extraordinary virtue and called forth the sacri-

\* It is not for a moment to be presumed, that all successive Popes from Alexander VIII. to Pius VI. the reigning Pontiff should have confirmed bishops and made cardinals of men, who had sworn to defend and teach doctrines so destructive of Catholic faith unity and church government, if these propositions were of the nature that this author represents them. From the year 1682 to 1692 the Pope did not confirm any French bishops: but Innocent XII. afterwards expedited bulls of institution to every French bishop, that had been nominated by the King during the intermediate period of the disagreement between the courts of Rome and Versailles. But what could authorise him to say? (p. 35) "During the dissension they flattered the Pope, they even extorted praises and commendations from him, and in the end he was severely punished for having given countenance to persons, whose only aim was to betray him and subvert the church, of which he was the chief pastor and head." How does this assertion agree with the character of *respectable prelates*, which we before observed was given to these very persons? How will facts warrant the following cruel and unjust imputation? (p. 35) that "the two forest wounds given to the Catholic cause since the schism of Luther arose from the worldly policy of Gallican prelates: the second of which is the renunciation of the infallibility of the Holy See by Bossuet and the other courtly bishops in the assembly of 1682." I know this same author calls in doubt (some modern Ultramontanists absolutely deny) the genuineness of Bossuet's defence of the Gallican clergy. He certainly cannot have read that work with attention, if he be earnest in asserting, that Bossuet and the other bishops first renounced papal infallibility in 1682: the long and uninterrupted adoption and declaration of this belief by the church of France and many other Catholic schools throughout Europe are in that work (by whomever it was written) too strongly proved, to be discredited by the mere assertions of any one individual, even of the first respectability.



fices of his choicest favourites for the edification and solace of the wavering and timid, must we not confide, that in an age of unprecedented impiety, the first immediate victims of this antichristian torrent of abandonment and cruelty are the chosen instruments, by which a merciful God has vouchsafed to soften the fury of the persecution and restore peace union and edification to his people?

As in no instance of church history do we read of so sudden so extensive so rapid so destructive a persecution of the Christian religion, as that, which we lately beheld in France, so neither has any age witnessed so general so firm so severe so edifying a sacrifice of a numerous learned opulent and exemplary body of clergy, such as we admire in these venerable exiles. It is a providential and strong lesson to their Roman Catholic brethren to abstain in future from attaching any imputation to them of weakening or deserting the grounds of submission to the centre of Catholic unity. Their exemplary and unshaken adherence to that very jurisdiction has been sealed by the blood and confirmed by the sufferings of many thousands of martyrs to that only cause\*. For the civic constitution of the Gallican clergy, which was the test in the hour of combat, reduced the whole question of life death or exile to the admission or rejection of the pure spiritual jurisdiction of one visible head of Christ's church upon earth. I trust a Lactantius will not be hereafter wanting to transmit to posterity the edifying and interesting narrative *De Mortibus Persecutorum*.

Condemnation of the acts of the

But it will be urged, that this declaration of the Gallican prelates in 1682 was condemned by two successive Popes, viz. by Innocent XI.

\* Vide a detailed account of the grounds of their sufferings in my History of the last Twenty Months, of which my Reverend Correspondent is even so well satisfied, that he tells me (p. 229), "If you had been a candidate for the Popedom, you could not have spoken with more orthodox propriety."



on the 11th April 1682, and by Alexander VIII. on the 4th August 1690: and therefore that the propositions ought to be renounced by every person, who wishes to hold communion with the Holy See. But above all it is insisted upon, that they cannot safely be maintained by any orthodox Catholic since the recent condemnation of them by his present Holiness Pope Pius VI. so lately as on the 4th of August 1794 by the bull, in which he has condemned the act and decrees of the diocesan council of Pistoia holden A. D. 1786.

Gallican  
meeting by  
two Popes.

When it is recollected, that during more than a whole century, the numerous clergy of France, amongst whom there have been many respectable learned and virtuous characters have uniformly qualified themselves for ecclesiastical preferments and dignities by swearing to maintain defend and teach these four propositions, it will be rather too assuming to treat them either as destructive of purity of faith, or incompatible with true Catholic submission to the supremacy of the *spiritual* power or authority of the church of Christ. The propositions are evidently not of faith: any decree therefore of the Pope about them will not be a declaration of the church of Christ concerning the Christian revelation, to which declaratory decrees alone Christ's promise of inerrancy is attached. What ecclesiastical power or right the head of the hierarchy may have by the canon law, or the consent and acquiescence of the dispersed churches to invalidate or set aside the synodical acts or decrees of particular bodies or convocations of clergy throughout the church, I undertake not to examine: but experience as well as reason authorises me to conclude, that the Pope has no irreformable power to pronounce the propositions contained in that synodical declaration of the Gallican clergy in 1682 false or contrary to the truth of the Christian revelation. Popes have done all they are enabled to do, to impeach and annul the truth and effects of these propositions.

Arguments  
against papal  
infallibility.

Bull of Pius  
VI. no con-  
demnation of  
the Gallican  
propositions.

Whoever believes, that Christ remains always with his church to guide and preserve her in truth to the end of time, will consequently  
6 believe,



believe, that he would not leave a matter of such importance, as the submission to the dogmatical decrees of her head in this indecisive state of doubt or error. To me therefore it is a demonstration, that the irreformability of such decrees cannot be real, if as a Christian I be not obliged to believe them so. Now the French and Irish and many other clergy and laity have sworn, that they do not hold themselves obliged to believe the infallibility of the Pope, and the great advocate for this infallibility is at all times ready to subscribe, *that it is no article of divine faith*. May it not therefore be fairly inferred, that Christ has not revealed it; since the church, which can declare irreformably those things, which Christ has revealed, has *in the many disputes* upon the question, which have disturbed her peace, never made such a declaration?

Bull of Pius VI. no condemnation of the Gallican propositions.

So far from the condemnation of the articles of Pistoia importing any condemnation of the declaration of the Gallican clergy in 1682, it appears evident, that this instrument or bull of his present Holiness is rather a recognition of their truth, than a condemnation of their falsity. Let us attend to the words of the bull, and they will convince us without aid of a comment. We are not to forget, that the acts and decrees of the council or synod of Pistoia contain matter, which his Holiness has thought it adviseable from his pastoral charge to declare erroneous and dangerous.

\* “ Nor ought we to pass over in silence that singular and deceitful  
“ temerity of the synod, that presumed to lavish the highest praises  
“ upon the declaration of the Gallican clergy in 1682, which has al-  
“ ready

\* Neque silentio prætereunda insignis ea fraudis plena synodi temeritas, quæ quidem improbatam apostolicâ sede conventûs Gallicani declarationem anno 1682 ausa sit non amplissimis modo laudibus exornare, sed quo majorem illi aucto-  
ritatem



“ ready been disapproved of by the Holy See ; but in order to attach  
 “ the greater authority unto it, to include it in a decree, which they  
 “ have insidiously intituled *Of Faith*, so publicly to adopt all the ar-  
 “ ticles contained in it (the declaration) and to sanction by their  
 “ public and solemn profession of these articles, the different matters,  
 “ they have delivered throughout their decree. Whence much  
 “ stronger reason presents itself to us to complain of this synod,  
 “ than our predecessors had to complain of that convocation : but no  
 “ slight injury is thereby offered to the Gallican church itself, as this  
 “ synod has thought proper to call in her authority to countenance  
 “ the errors, with which that decree is stained.”

“ Which acts therefore of the Gallican convention as soon as they  
 “ appeared, our venerable predecessor Innocent XI. by his brief of the  
 “ 11th day of April 1682 and afterwards Alexander VIII. more  
 “ expressly by his constitution *Inter Multiplices* on the 4th day of Au-

ritatem conciliaret, eam in decretum *De Fide* inscriptum insidiosè includere, articulos in illâ contentos palam adoptare & quæ sparsim per hoc ipsum decretum tradita sunt horum articulorum publicâ & solemnî professione obsignare. Quò sanè non solum gravior longè se nobis offert de synodo, quam prædecessoribus nostris fuerit de comitiis illis exposculandi ratio ; sed et ipsimet Gallicanæ ecclesiæ non levis injuria irrogatur, quam dignam synodus existimaverit, cujus auctoritas in patrocinium vocaretur errorum, quibus illud est contaminatum decretum.

Quamobrem quæ acta conventûs Gallicani, mox ut prodierunt, prædecessor noster ven. Innocentius XI. per litteras in formâ brevis die 11 Ap. anno 1682 post autem expressius Alexander VIII. constit. *Inter Multiplices* die 4 Aug. anno 1690 pro apostolici sui muneris ratione improbarunt resciderunt, nulla & irrita declararunt, multò fortius exigit a nobis pastoralis sollicitudo recentem horum factam in synodo tot vitiis affectam adoptionem, velut temerariam scandalosam, ac præsertim post edita prædecessorum nostrorum decreta, huic apostolicæ sedi summoperè, injuriosam reprobare, ac damnare prout eam præsentî hâc nostrâ constitutione reprobamus & damnamus ac pro reprobata & damnata haberi volumus.

“ gust



“ gult 1690, by reason of his apostolical charge, did disapprove of,  
 “ rescind and declare null and void. Much more forcibly then does  
 “ our pastoral care require of us to reprobate and condemn, as by  
 “ this our present constitution we do reprobate and condemn and  
 “ will have reprobated and condemned the *late adoption* thereof made  
 “ in a synod stained with so many defects, as rash scandalous and  
 “ particularly after the publication of our predecessors’ decrees \* as  
 “ injurious to this holy see.”

Nothing can be more clear, than that this bull is no condemnation of the four Gallican propositions: but only a condemnation of the insidious adoption of them by an erring and deceitful synod with intent thereby to gloss over and varnish their own errors and defects: for it is evident, that no other injury could be thereby done to the Gallican church, than by making use of their declaration, which was not erroneous, to cover and countenance other declarations, which were so.

\* If the head of the hierarchy have by ecclesiastical law the right of rescinding and avoiding the synodical acts of particular councils, this may be done without impeaching or affecting the truth of any one proposition contained in such acts. The avoidance of the acts of the Gallican synod of 1682 by Innocent and Gregory may have deprived them of the quality of canonical or synodical acts of a regular body of clergy, though it undertook not to touch the truth of the propositions declared by that meeting. So the difference must be attended to between rescinding and avoiding the acts of councils and condemning the falsity of propositions and doctrines maintained by councils. The affront to the holy see, which Pius VI. speaks of applies to the Pistoian synod’s adopting this declaration as a canonical and regular act of a national synod, after all its acts had been avoided by his predecessors. If he had meant to condemn the falsity of the four Gallican propositions, some words tending to condemn them would be discoverable in the bull. It is moreover self-evident, that no injury could be done to the Gallican church by the Pistoian synod’s adopting or misapplying condemned errors, if such they were.

Of



*Of the Inquisition.*

NO institution was ever set on foot since the establishment of Christianity, which has in all its consequences been productive of more scandal to the cause of religion, than the *Inquisition*. Our countrymen had at all times too much sense to admit of it, as well while they continued in communion with the see of Rome, as since they have separated from her. I have therefore said nothing of the Inquisition in the body of the work, as it could have no particular reference to the British constitution. But in as much as in other countries it has been the great state engine of ecclesiastical policy, I have thought it so far connected with the principles of this work, as not to be at liberty to pass it over quite unnoticed.

Scandal of  
the Inqui-  
sition.

The Inquisition exhibits a striking though melancholy proof of the folly and mischief of not drawing strongly the line of demarcation between the *spiritual* and *temporal* power. I am far from intending to enter into a history of the Inquisition. This subject must be odious and reprehensible to every man of candor or liberality. Yet few histories abound with more exaggerated falsehoods, than this does. There are too many grounds for harsh reflections upon the whole inquisitorial system, to render necessary the invention or fiction of prejudice or malice. Suffice it to recollect, that in as much as the Inquisition produces any *civil* effect, such as are external coercion, pecuniary mulcts, corporal punishment and loss of reputation honor member or life, it cannot proceed from the *spiritual* or *ecclesiastical* power of the church of Christ. The defects or vices therefore of the *inquisitorial* establishment ought not to be attributed to the church or the cause of religion, but to those states, that have been so inconsiderate and intemperate as to adopt and enforce it within their respective jurisdictions. For wherever the Inquisition has footing, every thing that relates to it, is a particular law of that particular state, where it is established: precisely as our old statutes *De Hæretico comburendo* and

Real abuses  
of the Inqui-  
sition.

Not to be at-  
tributed to  
religion but  
to each state  
of which it  
was made a  
law.



Original in-  
tent of the  
Inquisition.

against Lollardy were laws only of England; and however intolerant unjust or mischievous they might have appeared to foreigners, the imputation lay at the door of our parliament, and not at that of the church, of which the individual legislators were members, as well as other legislators of other countries, who had no such laws. The confused encroachments of the church and state upon each other's rights are the baneful seeds of scandal disunion and mischief in both. The original intent of the Inquisition may have been laudable and even pious, and considering the coarseness ignorance and barbarity of the times, when it was first established, might possibly have been productive of some good: although the institution were from its nature super-eminentely liable to immediate and important abuses. We read in the life of St. Dominick\* about the beginning of the 13th century † that in the south of France, “the effect of these his  
“labours was, that by his most holy life and heavenly doctrine, and  
“by many miracles, which our Lord wrought by him he converted  
“almost a hundred thousand souls, that were strayed and lost to the  
“true and Catholic religion, and having taken upon him by the  
“Pope's command, the office of Inquisitor against the Heretics, he  
“exercised it with great authority, making use of all *spiritual* arms to  
“reduce chastise and repress them. And afterwards Catholic princes  
“joined their *temporal* arms to his *spiritual* &c.” Had the inquisitorial powers been always confined to the *spiritual* arms, as it seems, St. Dominick properly applied them, our histories of the Inquisition would not have displayed an uninterrupted tissue of bloodshed cruelty and barbarity. It has rarely happened, that any authors have ever spoken of any state engines of religion upon the true and fair principle of their misapplication to objects out of the resort and competency of the *civil* power ‡.

The

\* Ribadin. 4th August.

† Some authors date the origin of the Inquisition at Thoulouse in 1208, others in 1212 and others in 1215.

‡ Mr. G. Dugdale a man of information published in 1680 “A Narrative of  
“unheard-of Popish Cruelties towards Protestants beyond Seas: or a new Ac-  
“count



The first public and regular instrument or constitution of the Inquisition was not made by a Pope or council, but by a lay sovereign the emperor Frederick the second, who in the year 1244, set forth four proclamations concerning this matter \*, “receiving the Inquisitors into his protection  
“and imposing the penalty of fire upon obstinate heretics and upon  
“penitent ones perpetual imprisonment, committing the cognizance  
“thereof unto the ecclesiastical persons and the condemning of them  
“unto secular judges : and this was the first law that imposed punish-  
“ment of death upon heretics &c.”

Imperial con-  
stitution of  
the Inqui-  
sition.

Still earlier traces however of an inquisition are discoverable A. D. 1198, when pope Innocent III. sent into the south of France two cistercian monks, *Rainier* and *Guy* to convert the Manicheans with which those countries then swarmed and to excommunicate the obstinate, with orders to the lords to confiscate the goods and property of the excommunicated, to banish them, and punish them severely : with a special power to Rainier to restrain the lords upon their own lands, by  
“count of the bloody Inquisition published as a *Caveat* to Protestants.” This tract, which is a most exaggerated account without one quotation or proof through the whole was re-published in 1701 under a new title, viz. “The Spanish Slaughter-House, or a Narrative of the Origin and Progress of the Inquisition, as it is now practised in Spain. Published to open the Eyes of all Protestants, that they may see the Designs of the Papists at this Day to overturn the Protestant Religion.” Cruel inhuman and unjust as this Author has represented the *Inquisition*, yet so far from proceeding herein upon principle, he expressly says in his appendix to the tract, that “the institution of this Spanish Inquisition at first was not only necessary (as the condition of affairs then was) but exceeding laudable, had it been kept within the bounds at first intended : but instead of being used on the Jews and Moors it hath been turned on the Protestants.” Why did not Mr. Dugdale reprobate the system of punishing any man for his religious convictions and scout the folly of controlling opinions by coercion ? These are principles, to the benefit of which Jews and Moors are as much entitled as Protestants.

First traces  
of the Inqui-  
sition.

\* History of the Inquisition, by Paul Servita. Vide also Limborch, Hist. Inq. p. 48, where this Frederician constitution is given at full length.



Dominicans  
the first in-  
quisitors.

How inquisi-  
tion intro-  
duced into  
different  
states.

excommunication and interdict. These two commissaries or missionaries were the first, that were called *inquisitors* \*, though at this time they seemed to have neither judicial nor ministerial powers, but were merely sent to enquire and report. The council of Narbonne A. D. 1235 and that of Bezier in 1246 gave to the Dominican friars as inquisitors in the provinces of Arles, Aix, Embrun and Vienne thirty-seven articles of directions, which were afterwards the foundation of all other tribunals of the Inquisition. † The Inquisition seems to have continued in France for some length of time. We find one of the commissioners in the cause of the Templars was the General Inquisitor in France (A. D. 1312) and that the famous Maid of Orleans (A. D. 1430) was declared innocent by the *Inquisitor of Faith*. From this time I find no mention made of any inquisitor in France till the time of Francis I. when pope Clement VII. sent Matthew Ari in quality of Inquisitor into France on account of Luther's defection from the church. ‡ Innocent IV. erected the Inquisitors into a sort of corporate or collegiate body: and introduced them into as many countries, as would receive them. Their reign was but short in France and Germany. Spain only established it throughout the kingdom under Ferdinand and Isabella A. D. 1448, under the pretext of clearing the country of the Moors and Jews. It was introduced into Portugal upon the model of the Spanish Inquisition under king John III. and the first tribunals thereof were established at Lisbon Coimbria and Evora ||. The different states of Italy admitted it at different periods and in different manners. Every country in fact rejected admitted or modelled it, as they thought proper. I do not find, that it ever gained footing in the kingdom of Naples: the republic of Venice admitted it under many modifications: to prove the particulars of which, Paul Servita wrote his History of the Inquisition, and

\* Fleur. Hist. Eccles. l. 47.

† The 9th and 10th chapters of Rayner's Treatise against the Waldenses are one string of instructions to the inquisitors.

‡ Vide Bouhour's Life of St. Ignatius, l. 11.

|| De la Neuville's History of Portugal, tom. i. p. 59.

addressed



addressed it to the duke of Venice. The Inquisition was transported by the Spaniards and Portuguese to their respective settlements in India, with additional rigor and severity: as all the vices of these two nations seem to have acquired gigantic increase in their foreign settlements. In the year 1688, when every engine was used in this country to blacken and render odious the Roman Catholic religion, a most horrid (not very authentic) history was published of the Inquisition as it was exercised at Goa \*. About this time, it appears to have been the constant theme, in the true *spirit of temporizing*, of all the violent opposers of the Jacobite party, to add to the real cruelties and infamy of the inquisitorial tribunals whatever horrors the most inventive malevolence could depict. As if British Roman Catholics were responsible for the municipal laws of Spain and Portugal, or as if the English writ *De Hæretico comburendo* threw any imputation upon the Catholics of Hungary or Sweden, or any of them could tarnish the super-excellence of that religion, which individuals through folly corruption and perverseness abused.

Without attempting to give in detail any of the inhuman practices and punishments, with which all the histories of the Inquisition are truly or falsely blackened; I shall close the subject by concluding, that the very principles of the Inquisition are directly anti-christian, by applying the sword to the purposes of preserving or propagating the gospel: and that it is transcendently destructive of civil liberty, to introduce any tribunal into any country, that encourages informers, favours secret examinations, and discountenances and intimidates the defenders of the accused. Such being the principles of the Inquisition, it evidently militates both against the general laws of God and man.

Principles of the inquisition repugnant to the laws of God and man.

\* Said to be translated from the French of Mons. Dallon, who laboured five years under it.



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F I N I S.



















Plowden, Francis

Church and State being an Enquiry into the Origin, Nature and Extend of  
Ecclesiastical and Civil Authority with Reference to the British  
Constitution

London 1795

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